The Rape Myth in the Old South Reconsidered

By Diane Miller Sommerville

In Southampton County, Virginia, the site of Nat Turner's 1831 revolt, another man of color was alleged to have committed an egregious act a few years earlier; in 1826 and 1827 Henry Hunt appeared before superior court accused of raping a white woman named Sydney Jordan. Hunt was a twenty-two-year-old laborer from St. Luke's parish and was described by his jailer as six feet tall, "straight and well made" with "a considerable share of effrontery." The latter attribute may have been prompted by Hunt's escape from jail. His flight from justice, however, was short-lived, as he was quickly apprehended.[1] Hunt's defense rested on his assertion that his relations with Sydney Jordan were entirely consensual. In fact, Hunt claimed to have "long been in the habit of sexual intercourse" with Jordan. Furthermore, Hunt maintained that on the night of the alleged sexual assault not he but another free black man had bedded Jordan.[2]

Hunt's protestations notwithstanding, the jury found him guilty of rape and sentenced him to hang.[3] In an astonishing turn of events, a

[1] Box 294 (May 21–July 31, 1826), Letters Received, Virginia Executive Papers (hereinafter LR,VEP) (Library of Virginia, Richmond). The enumeration of this group of boxes is sometimes erratic and confusing, with some boxes labeled several times. Wherever possible I have noted the box number currently intended for use. See also entries for June 12, 1826, and November 20, 1827, pp. 114 and 188 of Southampton County Court Minutes, 1824–1830 (Library of Virginia) (microfilm reel no. 33). The author would like to thank Jan Lewis, Suzanne Lebsock, Thomas P. Slaughter, Deborah Gray White, Philip J. Schwarz, and David R. Goldfield for their valuable comments and encouragement. Funding for this project was made possible in part by research grants awarded by the North Caroliniana Society, the Virginia Historical Society, the American Historical Association, and Rutgers University. An earlier version of this article was presented at the Ninth Berkshire Conference on the History of Women, Vassar College, June 1993. Commentators Jane Turner Censer and Martha Hodes and the several anonymous referees from the *Journal of Southern History* deserve thanks for their thoughtful comments and criticism.

[2] June 15, 1827 folder, box 299 (June 1–July 1827), LR, VEP.

[3] *Ibid.* and October 22–31 folder, box 334 (August 1–October 31, 1833), LR,VEP. Rape or attempted rape of a white female by a free black male was a capital offense mandating the death sentence. Juries that found such defendants guilty were given no leeway in sentencing and were

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group of white citizens from Southampton County, including Hunt's jailer, the court clerk, and a member of the jury that had found him guilty, petitioned the governor and the executive council and asked that they extend clemency to the convicted rapist.[4] Sydney Jordan, the petitioners explained, had committed perjury. Hunt averred throughout his defense that his and Jordan's relationship was based on mutual consent. Jordan denied this; in fact, she denied having met Henry Hunt prior to the night of the alleged assault. The crowning piece of evidence put forth in the petition defending Hunt was the statement that Jordan had given birth to a "black child" over a year after the alleged rape. The birth of a nonwhite child belied Jordan's assertion that she had not maintained intimate relations with black men and thus lent credibility to Hunt's account. Eventually Jordan acknowledged that the child's father was Nicholas Vick, the free black man whom Hunt claimed to have found in bed with Jordan on the night she claimed to have been raped by Hunt. With her lies unsalvageable, Jordan admitted having had "frequent criminal intercourse with . . . Henry Hunt" as well as with Nicholas Vick. The petitioners concluded that Henry Hunt was not guilty of the alleged sexual assault and pleaded that "humanity requires the interposition of the Executive council to rescue him from an undeserved doom."[5] A sympathetic governor granted Hunt a pardon. [6]

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required to affix the death sentence. Sympathetic jurors finding a black man guilty of rape but with mitigating circumstances, however, could and did recommend pardoning to the governor. This procedure applied to free men of color as well as slaves. Virginia, *Acts* . . . (1824–25), Ch. 23, p. 22.

[4] June 15, 1827 folder, box 299, LR, VEP. On the practices of governors and executive councils regarding pardons see Bertram Wyatt-Brown, "Community, Class, and Snopesian Crime: Local Justice in the Old South" in Orville Vernon Burton and Robert C. McMath Jr., eds., *Class, Conflict, and Consensus: Antebellum Southern Community Studies* (Westport, Conn., and London, 1982), 194–97; Ernest James Clark, Jr., "Aspects of the North Carolina Slave Code, 1715–1860," *North Carolina Historical Review,* XXXIX (April 1962), 153; Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the 19th-Century American South* (New York and Oxford, 1984), 63–64; Philip J. Schwarz, *Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705–1865* ([Baton Rouge], 1988), 23; Ulrich B. Phillips, *American Negro Slavery. A Survey of the Supply, Employment and Control of Negro Labor as Determined by the Plantation Regime* (New York, 1918; first paperback ed., Baton Rouge, 1966), 461–62; and "Slave Crime in Virginia," *American Historical Review,* XX (January 1915), 339; Michael S. Hindus, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767–1878* (Chapel Hill, 1980), 104, 112–24, 155–56; Daniel J. Flanigan, "Criminal Procedure in Slave Trials in the Antebellum South," *Journal of Southern History*, XL (November 1974), 543–45; Arthur Howington, "The Treatment of Slaves and Free Blacks in the State and Local Courts of Tennessee" (Ph.D. dissertation, Vanderbilt University, 1982), 162; Lawrence M. Friedman, *Crime and Punishment in American History* (New York, 1993), 92; and Arthur P. Scott, *Criminal Law in Colonial Virginia* (Chicago, 1930), 116–21.

[5] June 15, 1827 folder, box 299, LR, VEP.

[6] Letter dated July 11, 1827, from William I. Everitt, jailer of Southampton County, box 299, LR, VEP.

Seizing a pen instead of rope and fagot to deal with an accused black rapist seems irreconcilable with the image, largely the product of the postbellum period, of lawless, unrestrained southern lynch mobs bent on vigilante "justice" and retribution. Not only did this black man receive a trial, presumably attendant with certain procedural rights, but he also became the object of white citizens' sympathies and concern.[7] The collective fear and anxiety about black sexual assault that loomed large in postbellum southern society seem conspicuously absent in the case of Henry Hunt.[8] Moreover, his case is not iso-

[7] The broader question, hotly debated among historians, of whether blacks, and particularly slaves, generally received fair trials, is beyond the scope of this essay, although a major argument here is that they were indeed afforded certain procedural rights that were routinely denied accused black rapists in the postbellum South. Among those historians who argue that accused slave criminals were treated fairly, at least to a certain degree, are Daniel Flanigan, "Criminal Procedure in Slave Trials," 537–64; A. E. Keir Nash, "Fairness and Formalism in the Trials of Blacks in the State Supreme Courts of the Old South," *Virginia Law Review*, LVI (February 1970), 64–100; Nash, "A More Equitable Past? Southern Supreme Courts and the Protection of the Antebellum Negro," *North Carolina Law Review*, XLVIII (1970), 197–242; Nash, "The Texas Supreme Court and Trial Rights of Blacks, 1845–1860," *Journal of American History*, LVIII (December 1971), 622–42; Guion Griffis Johnson, *Ante-bellum North Carolina: A Social History* (Chapel Hill, 1937), 497–510; Clark, "Aspects of the North Carolina Slave Code, " 148–64; R. H. Taylor, "Humanizing the Slave Code of North Carolina," *North Carolina Historical Review,* II (July 1925), 323–31; Ayers, *Vengeance and Justice*, 134–37; Royce G. Shingleton, "The Trial and Punishment of Slaves in Baldwin County, Georgia, 1812–1826," *Southern Humanities Review,* VIII (Winter 1974), 67–73; E. Merton Coulter, "Four Slave Trials in Elbert County, Georgia," *Georgia Historical Quarterly,* XLI (September 1957), 237–46; John C. Edwards, "Slave Justice in Four Middle Georgia Counties," *Georgia Historical Quarterly,* LVII (Summer 1973), 265–73; Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York, 1974) 25–49; Martha Hodes, "Sex Across the Color Line: White Women and Black Men in the Nineteenth-Century American South" (Ph.D. dissertation, Princeton University, 1991), 77–78; and Patrick S. Brady, "Slavery, Race, and the Criminal Law in Antebellum North Carolina: A Reconsideration of the Thomas Ruffin Court," *North Carolina Central Law Journal*, X (Spring 1979), 248–60. Those who draw less sanguine conclusions about "fairness" include Kenneth M. Stampp, *The Peculiar Institution: Slavery in the Ante-bellum South* (New York, 1956), 224–28; Alan D. Watson, "North Carolina Slave Courts, 1715–1785," *North Carolina Historical Review*, LX (January 1983), 24–36; Judith Kelleher Schafer, "The Long Arm of the Law: Slave Criminals and the Supreme Court in Antebellum Louisiana," *Tulane Law Review*, LX (June 1986), 1247–68; Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York and Oxford, 1982), 387–89; Wyatt-Brown, "Community, Class, and Snopesian Crime," 173–206; Michael S. Hindus, "Black Justice Under White Law: Criminal Prosecutions of Blacks in Antebellum South Carolina," *Journal of American History,* LXIII (December 1976), 596–99; Friedman, *Crime and Punishment*, 91; and Schwarz, *Twice Condemned*, 23. A. E. Keir Nash dissects some of these important works in an extensive historiographical analysis. See "Reason of Slavery: Understanding the Judicial Role in the Peculiar Institution," *Vanderbilt Law Review*, XXXII (January 1979), 7–218 and a response by Robert B. Jones, "Comment: Reason of Slavery: Understanding the Judicial Role in the Peculiar Institution," *ibid.*, 219–23.

[8] For a discussion of the rape myth in the later nineteenth century see George M. Fredrickson, *The Black Image in the White Mind: The Debate on Afro-American Character and Destiny, 1817–1914* (New York and other cities, 1971), especially Chap. 9, "The Negro as Beast: Southern Negrophobia at the Turn of the Century"; Joel Williamson, *Crucible of Race: Black-White Relations in the American South Since Emancipation* (New York and Oxford, 1984), 111–39, 306–9; and Madelin Joan Olds, "The Rape Complex in the Postbellum South" (D.A. dissertation, Carnegie-Mellon University, 1989). For works dealing with twentieth-century subjects of the rape complex see Gunnar Myrdal, *An American Dilemma: The Negro Problem and Modern*

lated: over 250 cases of sexual assault by black males on white women or girls are reported in the records of twelve southern states from 1800 through 1865.[9] Although this study focuses primarily on Virginia and North Carolina, admittedly two of the northern-most slaveholding states, secondary sources as well as published primary sources, such as appellate decisions, reveal that similar occurrences were turning up throughout the slave South.[10] In Virginia alone there

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Democracy (New York and London, 1944), 561–62, 587–92, 1355–56*n*41; Allison Davis, Burleigh B. Gardner, and Mary R. Gardner, *Deep South: A Social Anthropological Study of Caste and Class* (Chicago, 1941), 25–28; Jacquelyn Dowd Hall, *Revolt Against Chivalry: Jessie Daniel Ames and the Women's Campaign Against Lynching* (rev. ed.; New York, 1993); and Nancy MacLean, *Behind the Mask of Chivalry: The Making of the Second Ku Klux Klan* (New York and Oxford, 1994), 128–57. A number of black rape cases in the 1930s received considerable contemporaneous attention and have been the subject of recent analysis. Consult Dan T. Carter, *Scottsboro. A Tragedy of the American South* (Baton Rouge, 1969); James Goodman, "Stories of Scottsboro" (Ph.D. dissertation, Princeton University, 1990); Goodman, *Stories of Scottsboro* (New York, 1994); James R. McGovern, *Anatomy of a Lynching. The Killing of Claude Neal* (Baton Rouge and London, 1982); Charles H. Martin, "Oklahoma's 'Scottsboro' Affair: The Jess Hollins Rape Case, 1931–1936," *South Atlantic Quarterly*, LXXIX (Spring 1980), 175–88; and Beth Crabb, "May 1930: White Man's Justice for a Black Man's Crime," *Journal of Negro History,* LXXV (Winter–Spring 1990), 29–40. For post–World War II cases of black southerners accused of improper sexual advances toward or rape of white women see Stephen J. Whitfield, *A Death in the Delta: The Story of Emmett Till* (New York and London, 1988); Eric W. Rise, "Race, Rape, and Radicalism: The Case of the Martinsville Seven, 1949–1951," *Journal of Southern History,* LVIII (August 1992), 461–90; Charles H. Martin, "The Civil Rights Congress and Southern Black Defendants," *Georgia Historical Quarterly*, LXXI (Spring 1987), 25–52; Steven F. Lawson, David R. Colburn, and Darryl Paulson, "Groveland: Florida's Little Scottsboro," *Florida Historical Quarterly*, LXV (July 1986), 1–26; and Nick Davies, *White Lies: Rape, Murder, and Justice Texas Style* (New York, 1991).

[9] With few exceptions, the cases cited here are those in which the defendant was charged officially with rape or attempted rape, sometimes referred to as ravishment. Two cases of murder/rape are included. I have made no attempt to scrutinize assault and battery (also referred to as affray) cases that may have involved females resisting sexual assault. It should also be noted that an overwhelmingly disproportionate number of extant documents dealing with black sexual assault involve those males actually convicted of rape or attempted rape. Transcripts, many of them rich in detail and often accompanied by judges' and juries' opinions, were routinely forwarded to the governor and/or the executive council for review and therefore are filed among state papers. A black man acquitted of rape or attempted rape had no need for his court records to be sent to state officials. The archival result is that a wealth of material exists on this topic and is readily found in state repositories. However, only dogged and systematic research in county court minute and order books will provide the information required to make more reliable generalizations about rape and race.

[10] This essay examines cases in all former Confederate states in addition to the border states Maryland, Missouri, and Kentucky, focusing, as stated in the text, more closely on those in Virginia and North Carolina. The primary sources yielding information about accused black rapists include local and appellate court records and documents, petitions and letters to governors, and newspapers. My decision to look at these two states was shaped by a number of factors—primarily the availability and preservation of large numbers of official documents and the extensive scholarship on these two states for both the antebellum and postbellum periods. For those readers who might take exception with my decision to concentrate on Virginia and North Carolina, citing their geographic proximity to "the North," I would beg two considerations. First, though the notion of "the South" encompasses the extensive diversity and complexities of that region's past, all southern states, including North Carolina and Virginia, shared the institution of forced

are over 150 cases from 1800 through 1865 of African American men, free and slave, condemned to die for sexually assaulting white women or children.[11] Nearly half of these condemned black rapists escaped their sentences of execution, suggesting that antebellum white southerners felt less compelled to exact death from a black man accused of sexually violating a white female than did postbellum white southerners. The argument here is that the rape trial of Henry Hunt, as well as those of dozens of other black southern males, demonstrates that antebellum white southerners were not nearly as consumed by fears of black men raping white women as their postbellum descendants were. As Eugene Genovese has written, the "titillating and violence-provoking theory of the superpotency of that black superpenis, while whispered about for several centuries, did not become an obsession in the South until after emancipation . . . ."[12] The pervasive sexual and racial anxieties that galvanized scores of lynch mobs after the war failed to manifest themselves before emancipation. Why is it, then, that so much scholarship has perpetuated the notion that such fears were a constant throughout the history of the slaveholding South?

A quick look at the historiography of the subject may shed light on the perpetuation of the "myth" about the "rape myth." Some scholarly

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enslavement of African Americans through the Civil War. Secondly, one need only look to twentieth-century statistics on rape, race, and execution to discern how deeply the "rape complex" was embedded in the cultures of both Virginia and North Carolina. Virginia, for example, was one of only three states in the country that continued to punish attempted rape with death. Furthermore, in the years from 1908 through 1962, fifty-four black Virginians were executed for either rape or attempted rape while not a single white man was sentenced to death for the same crimes. This trend is mirrored in North Carolina. From 1901 through 1961, sixty-three blacks were sentenced to die for rape; seven whites and two Indians were sentenced to death for the same crime. In William J. Bowers, *Legal Homicide: Death as Punishment in America, 1864–1982* (Boston, 1974), 514–19, 472–79; and Donald H. Partington, "The Incidence of the Death Penalty for Rape in Virginia," *Washington and Lee Law Review*, XXII (Spring 1965), 43–75. Further research may demonstrate whether findings presented in this study apply to other former slaveholding states.

[11] In all cases the alleged victim was a white woman or girl as the sexual assault of a black female slave generally was not a capital offense and was not even a crime in some states. Nonetheless, occasionally black men appeared in court on charges of raping or attempting to rape black females, both enslaved and free. See citations in note 34. Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York, 1975), 162; Catherine Clinton, "Bloody Terrain: Freedwomen, Sexuality and Violence During Reconstruction," *Georgia Historical Quarterly*, LXXVI (Summer 1992), 315; and Clinton "'Southern Dishonor': Flesh, Blood, Race, and Bondage," in Carol Bleser, ed., *In Joy and Sorrow: Women, Family, and Marriage in the Victorian South, 1830–1900* (New York, 1991), 65; Deborah Gray White, *Ar'n't I a Woman? Female Slaves in the Plantation South* (New York and London, 1985), 152; Karen A. Getman, "Sexual Control in the Slaveholding South: The Implementation and Maintenance of a Racial Caste System," *Harvard Women's Law Journal*, VII (Spring 1984), 135; Thomas R. R. Cobb, *An Inquiry Into the Law of Negro Slavery in the United States of America* (New York, 1858; rpt. 1968), 99; and Friedman, *Crime and Punishment,* 93.

[12] Genovese, *Roll, Jordan, Roll*, 461–62.

works that have documented early white sexual anxiety about black men have led to the belief that white fears of the African American man as a rapist grew out of the slave experience and persisted in the antebellum South. A close examination of the historical literature reveals how this postbellum white anxiety about black male sexuality, which a number of historians have documented, was read backwards into the antebellum period. Significantly, the generation of late-nineteenth-century radical racists who argued against education and enfranchisement of blacks on the grounds that these innovations only exacerbated the "race problem" tended to romanticize the relations between slave and master. Turn-of-the-century writers and editors often denied that slaves of the Old South had posed any sexual threat to white women. Animated by perceived changes in the "New Negro," increases in the black population, and an unprecedented political threat, many authorities of the late nineteenth and early twentieth centuries waxed nostalgic about the cross-racial plantation family.[13] White mistresses did not fear slave men then because of "the natural trust and affection subsisting between the two races."[14] During the antebellum era, these southern apologists argued, illiterate, unschooled blacks rarely raped white women. Even during the Civil War, when white protectors were away from the plantation, women had nothing to fear when left alone with their male slaves. Henry McHatton had grown up on a Louisiana plantation where, he reminisced, "there was no lock between any negro and my mother's bedroom. My father was often absent. During the war, there were thousands of white women on isolated plantations alone under the care of the slaves for months, and even years. Many women made trips through the country day and night alone in charge of negro drivers. If this trust was ever betrayed, I have never heard of it."[15] Myrta Lockett Avary blamed northern interlopers for the change in black demeanor toward white women: "This crime [rape] was a development of a period when the negro was dominated by political, religious and social advisors from the North and by the attitude of the Northern press and pulpit. It was practically

[13] Fredrickson, *The Black Image in the White Mind,* 204–9; and Williamson, *Crucible of Race*, especially Chap. 4, "The Rise of the Radicals."

[14] Francis A. Shoup, "Uncle Tom's Cabin Forty Years After," *Sewanee Review*, II (November 1893), 96.

[15] Henry McHatton, "The Sexual Status of the Negro—Past and Present," *American Journal of Dermatology and Genito-urinary Diseases*, X (January 1906), 8.

unknown in wartime, when negroes were left on plantations as protectors and guardians of white women and children."[16]

In an article published in 1900 a University of Georgia professor and Baptist clergyman, John Roach Straton, posed the rhetorical question, "Will Education Solve the Race Problem?" to which he answered an emphatic and resounding *no*. Straton drew a rather unscientific correlation between nearly universal illiteracy among slaves and the infrequency of blacks' raping white women in the years before the Civil War. He further observed that, after emancipation, black literacy increased and, concomitantly, so did black crime.[17] Such claims "proved" that education made blacks sexually dangerous and provided the underpinnings for political disfranchisement and social segregation of black southerners in the late nineteenth and early twentieth centuries.

It was not until 1918 that the portrayal of the male slave as sexually nonthreatening was disputed. Ulrich B. Phillips, himself a southern apologist for slavery, challenged this portrait of the black male in his classic *American Negro Slavery*. Phillips documented 105 cases of rape or attempted rape by slaves in Virginia from 1780 through 1864, as well as similar cases in five other southern states. In doing so, Phillips debunked the myth of the eunuch slave, discrediting the "oft-asserted Southern tradition that negroes never violated white women before slavery was abolished."[18] This stance might strike the reader as inimical to Phillips's well-known portrayal of slaves as docile, content with their bondage. Phillips, however, utilized the discussion of slave "crime in abundance" as a means to showcase the benevolence of the southern judicial system as well as the paternalism and humanitarianism of slave owners. Not coincidentally, Phillips documented numerous acquittals of slaves for serious offenses, as well as a pattern of lenient punishment. Furthermore, he asserted that the felonies with which slaves were charged were generally viewed as "criminal regardless of the status of the perpetrators." By implication, southern jurisprudence was color-blind and characterized by "considerable impartiality to malefactors of both races and conditions." [19]

[16] Myrta Lockett Avary, *Dixie After the War* (New York, 1906), 384.

[17] John Roach Straton, "Will Education Solve the Race Problem?" *North American Review*, CLXX (June 1900), 786–87 and 789.

[18] Phillips, *American Negro Slavery*, 458–60 (quotation on p. 459).

[19] *Ibid.*, 454 (first quoted phrase) and 456 (second and third quotations). Phillips nonetheless cites, as does Kenneth Stampp, instances of mob violence directed at alleged black rapists. See

In the 1930s and 1940s southern white liberals unleashed their assault on radical racist ideology and their criticism of southern culture, including the characterization of black men as "beasts." What, for U. B. Phillips and other scholars of the early twentieth century, had been evidence of rape, clear and simple, became, for a Freudian generation, a "rape complex." Wilbur J. Cash in his seminal work *The Mind of the South* (1941) denied contemporary racist claims of rampant black sexual assault, laying greater odds that a white woman would be struck by lightning than that she would be raped by a black man. Cash placed the "rape complex," as he termed it, squarely at the doorstep of antebellum slave society, which elevated the white woman to a pedestal and worshipped her as the symbol of virtue, honor, and chastity. Southern white men, he claimed, practiced "gyneolatry," or the deification of their women, which, in effect, purged white women of their sexuality and made them sexually inaccessible. These same men, Cash wrote, turned instead to slave women to satisfy their lust. Over time, white southerners came to identify white womanhood with the South itself. "What Southerners felt, therefore, was that any assertion of any kind on the part of the Negro constituted in a perfectly real manner an attack on the Southern woman."[20]

The relationship between sex and race was at last examined in a

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Phillips, *American Negro Slavery,* 461–63; and Stampp, *Peculiar Institution*, 190–91; as well as Clement Eaton, "Mob Violence in the Old South," *Mississippi Valley Historical Review,* XXIX (December 1942), 367; and Paul D. Lack, "Slavery and Vigilantism in Austin, Texas, 1840–1860," *Southwestern Historical Quarterly*, LXXXV (July 1981), 1–20.

[20] W. J. Cash, *The Mind of the South* (New York, 1941; page numbers from Vintage paperback ed.), 119 and 89 (quotations), 88–89, 116–20, and 131. Works written approximately the same time as Cash's book that analyzed the connection between sex and race relations include John Dollard, *Caste and Class in a Southern Town* (Garden City, N.Y., 1937), especially pages 134 and 135; Lillian Smith, *Killers of the Dream* (New York, 1949; rpt., 1961), especially pages 145, 121–24, and 169; and Davis, Gardner, and Gardner, *Deep South*, 25–28. On the nineteenth-century conception of sexual passionlessness as a womanly ideal see Nancy F. Cott, "Passionlessness: An Interpretation of Victorian Sexual Ideology, 1790–1850," *Signs*, IV (Winter 1978), 219–36; Robert M. Ireland, "The Libertine Must Die: Sexual Dishonor and the Unwritten Law in the Nineteenth-Century United States," *Journal of Social History*, XXIII (Fall 1989), 28–29 ; Jan Lewis, "The Republican Wife: Virtue and Seduction in the Early Republic," *William and Mary Quarterly,* 3d Ser., XLIV (October 1987), 681–82; and Estelle B. Freedman, "Sexuality in Nineteenth-Century America: Behavior, Ideology, and Politics," *Reviews in American History*, X (December 1982), 199–200, 202, and 208. On the desexualization of southern white women see John D'Emilio and Estelle B. Freedman, *Intimate Matters: A History of Sexuality in America* (New York, 1988), 94–95; Catherine Clinton, *The Plantation Mistress: Woman's World in the Old South* (New York, 1982), 110–11 and 209; Smith, *Killers of the Dream,* 141, 120–21; and Adele Logan Alexander, *Ambiguous Lives: Free Women of Color in Rural Georgia, 1789–1879* (Fayetteville, Ark., 1991), 64. Elizabeth Fox-Genovese questions this characterization and argues that "slaveholding culture emphasized control of female sexuality; it did not deny its existence." *Within the Plantation Household: Black and White Women of the Old South* (Chapel Hill and London, 1988), 235–36 (quotation on p. 236) and 240. Similarly, Steven M. Stowe docu-

major historical work in 1968. Winthrop D. Jordan expanded upon the work of Cash and others by grafting their ideas onto the body of historical treatments of slavery. Cash's ideas on white womanhood, for example, were developed and elaborated upon by Jordan in his exhaustive study of colonial race relations, *White over Black*, which traced the glorification of white women to early English efforts to populate and colonize New World settlements. Jordan wrote that "white women were, quite literally, the repositories of white civilization. White men tended to place them protectively upon a pedestal and then run off to gratify their passions elsewhere." Jordan theorized that guilt-ridden white men who sexually exploited slave women and who were jealous of presumed black male potency in turn projected their own sexual desires onto slave men, in the process creating an irrational fear of black male sexuality. "It is not we, but others, who are guilty. It is not we who lust, but they."[21]

Jordan's conjectures on the ties between sex and race have proven very influential in informing subsequent studies of southern history. Works by Lawrence J. Friedman, Earl E. Thorpe, and Peter H. Wood, to name a few, have accepted the argument put forth by Jordan in *White over Black* and have thus perpetuated the assumption that white fears of black ravishment pervaded southern attitudes during the colonial period and in the years before and during the Civil War.[22] These

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ments the "culture of romantic love" embraced by southern elites as well as the concern espoused by moral advisors for "the latent power of female passion." Stowe, *Intimacy and Power in the Old South: Ritual in the Lives of the Planters* (Baltimore and London, 1987), 50–121 (first quotation on p. 96; second on p. 54). See also Wyatt-Brown, *Southern Honor*, 293; and Dorothy Ann Gay, "The Tangled Skein of Romanticism and Violence in the Old South: The Southern Response to Abolitionism and Feminism, 1830–1861" (Ph.D. dissertation, University of North Carolina, Chapel Hill, 1975), 105–6.

[21] Winthrop D. Jordan, *White over Black: American Attitudes Toward the Negro, 1550–1812* (Chapel Hill, 1968), 148 (first quotation) and 152 (second quotation).

[22] Lawrence J. Friedman, *The White Savage: Racial Fantasies in the Postbellum South* (Englewood Cliffs, N.J., 1970), 11; Earl E. Thorpe, *The Old South: A Psychohistory* (Durham, N.C., 1972), 122; Peter H. Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 through the Stono Rebellion* (New York, 1974), 236–37; and Getman, "Sexual Control in the Slaveholding South," 134. Attesting to the staying power of Jordan's work is the recent article by Peter W. Bardaglio in which he claims that "white southerners, both inside and outside the legal system, widely shared the belief that black men were obsessed with the desire to rape white women." Bardaglio, "Rape and the Law in the Old South: 'Calculated to Excite Indignation in Every Heart'," *Journal of Southern History*, LX (November 1994), 752. A few notable works do, however, dissent; for example, Genovese, *Roll, Jordan, Roll*, 33–34; and Fox–Genovese, *Within the Plantation Household*, 291. Most recently the work by Martha Hodes suggests that white fears of black male sexual threats did not pervade the antebellum or even the war years. In "Wartime Dialogues on Illicit Sex: White Women and Black Men," she writes that "while whites feared slave uprisings during the Civil War, no great tide of sexual alarm engulfed white southerners as white men left white women at home with slave men." Hodes's essay appears in

scholars, looking backward, have projected postbellum assumptions into antebellum southern culture, in the process finding widespread sexual anxiety and hysterical fear where it did not occur.[23] Slaveholders assuredly feared acts of violence by their slaves—arson, poisonings, assault, murder, and, perhaps most of all, armed rebellion.[24] There is no evidence, however, to suggest that white southerners were apprehensive or anxious about their slaves raping white women.

One need only return to the work of U. B. Phillips and to the cases of black men accused of rape or attempted rape in the years before the Civil War to see that neither white judicial institutions nor white communities were sufficiently obsessed with sexual danger posed by black men to deprive accused or even convicted black rapists of due process. In the lower courts, which had original jurisdiction over such cases, white witnesses sometimes testified on behalf of the accused, either to extol the prisoner's industrious character or to malign the in-

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Catherine Clinton and Nina Silber, eds., *Divided Houses: Gender and the Civil War* (New York and Oxford, 1992), 239. See also Hodes, "Sex Across the Color Line," 9–10, 40, and 79. A number of scholars outside the discipline of history have accepted that white fears of black rape originated in the slave South. See, for example, sociological studies on race and sex by Calvin C. Hernton, *Sex and Racism in America* (New York, 1965), 15–19; as well as Coramae Richey Mann and Lance H. Selva, "The Sexualization of Racism: The Black as Rapist and White Justice," *Western Journal of Black Studies*, III (No. 3, 1979), 169–70.

[23] This is not to deny the existence of white beliefs about the innate promiscuity and licentiousness of both black men and women that Winthrop Jordan has rooted in the earliest English contacts with Africa (see *White over Black*, 24–40). I do, however, take issue with those who make the leap from assumptions about black men as libidinous to those about black men as rapists. Though related, these two concepts are not one and the same. For a discussion on white perceptions about African American female sexuality in the Old South see White, *Ar'n't I a Woman?* 29–46, 60–61; D'Emilio and Freedman, *Intimate Matters*, 97, 101; Melton A. McLaurin, *Celia: A Slave* (Athens, Ga., and London, 1991), 22–23; Alexander, *Ambiguous Lives,* 64 and 144; Clinton, *Plantation Mistress*, 222; Angela Y. Davis, *Women, Race, and Class* (New York, 1983), 174 and 182; Fox-Genovese, *Within the Plantation Household*, 292 and 325–26; Genovese, *Roll, Jordan, Roll*, 427–28; Joseph T. Glatthaar, *Forged in Battle: The Civil War Alliance of Black Soldiers and White Officers* (New York and London, 1990), 91; Mary Frances Berry and John W. Blassingame, *Long Memory: The Black Experience in America* (New York and Oxford, 1982), 115–16; Hodes, "Sex Across the Color Line," 41; Getman, "Sexual Control in the Slaveholding South," 115–17; Margaret A. Burnham, "An Impossible Marriage: Slave Law and Family Law," *Law and Inequality*, V (July 1987), 189 and 221–22; and Hazel V. Carby, *Reconstructing Womanhood: The Emergence of the Afro-American Woman Novelist* (New York and Oxford, 1987), 20–39.

[24] On white fears of slave violence consult Herbert Aptheker, *American Negro Slave Revolts* (New York, 1943); Phillips, *American Negro Slavery*, 473–76 and 481–88; Stampp, *Peculiar Institution*, 127–28 and 136–38; John W. Blassingame, *The Slave Community: Plantation Life in the Antebellum South* (rev. ed.; New York and Oxford, 1979), 230–38; Williamson, *Crucible of Race*, 117; Johnson, *Ante-bellum North Carolina*, 510–21; Jeffrey Crow, *The Black Experience in Revolutionary North Carolina* (Raleigh, 1977), 40, 56–61, and 85–95; and Fredrickson, *Black Image in the White Mind*, 8–9. Fears of slave conspiracy and uprising during the Civil War are explored in Winthrop Jordan, *Tumult and Silence at Second Creek: An Inquiry into a Civil War Slave Conspiracy* (Baton Rouge and London, 1993).

tegrity of the white female victim. These same courts often scrutinized testimony to ferret out coerced confessions. In the event of a guilty verdict, the convicted rapist could utilize his right to appeal in most southern states. On many occasions southern appellate courts threw out convictions of black rapists on myriad legal technicalities.[25] Finally, if none of these avenues were effective, the condemned black rapist, or white men acting on his behalf, could, and many times did, petition the governor for a reprieve. Black men stood a reasonable chance of acquittal, clemency, or leniency for raping or attempting to rape white women or girls, which belies claims that the rape myth exercised considerable sway in antebellum southern society. Simply put, the image of the menacing black rapist did not become the obsession of the southern white mind until sometime after emancipation.[26] It is hard to imagine, for example, a group of white citizens petitioning the governor of Alabama in 1931 on behalf of the nine black males charged with raping two white women on a freight train near Scottsboro, even in a case in which a great deal of credible evidence cast doubt on the veracity and integrity of the white accusers. In spite of such evidence and rumors that the Scottsboro women might have been

[25] Some of the grounds for appellate reversals included the faulty wording of indictments, especially those that failed to state the race of the victim (*Henry* v. *State of Tennessee*, 4 Humphreys 270 [1843]; *Grandison* v. *State of Tennessee*, 2 Humphreys 451 [1841]; *Commonwealth* v. *Mann*, 2 Va. Cas. 210 [1820]; *State* v. *Charles*, 1 Fla. 298 [1847]); procedural improprieties (*State* v. *Jesse*, 19 N.C. 297 [1837]); coerced confessions (*State* v. *Gilbert*, 2 La. Ann. 244 [1847]); failure to allow a slave owner to testify on behalf of his or her slave (*State* v. *Peter*, 14 La. Ann. 527 [1859]); the absence of force in the sexual assault, namely through the assailant's impersonation of the accuser's husband (*Lewis* v. *State,* 30 Ala. 54 [1857] and *Wyatt* v. *State of Tennessee*, 2 Swan 394 [1852]); and the youth of the accused rapist (*State* v. *Sam*, 60 N.C. 293 [1864]).

[26] There is evidence to suggest that even after the Civil War some black men accused of sexually assaulting white women or girls received a sympathetic hearing from certain quarters of various white communities. Laura Edwards recounts that sixty men petitioned Governor William W. Holden of North Carolina for the pardon of William Somerville, convicted in 1869 of the attempted rape of a white woman. See "Sexual Violence, Gender and Reconstruction in Granville County, North Carolina," *North Carolina Historical Review*, LXVIII (July 1991), 250. Edwards also observes that most cases involving black males on trial for the rape or attempted rape of white females during this highly volatile and violent period generally proceeded through the courts with little excitement. And as late as 1881 the trial of Morris Locke, a black sixteen-year-old, resulted in a hung jury. He stood accused of raping an eight-year-old white girl. A subsequent trial found him not guilty of the rape but guilty of assault with intent to commit a rape for which he was sentenced to fifteen years of hard labor at the state penitentiary. In Rowan County Criminal Action Papers, 1846–1883 (1881 and 1882 folders) and Rowan County Superior Court Minute Docket, 1879–1883, pp. 332, 337, 346, 349, 369, 370, 429, and 446 (North Carolina Department of Cultural Resources, Division of Archives and History, Raleigh). These examples are bolstered by the conclusions of Joel Williamson who writes, "For a generation after the Civil War, Southern whites seemed to have no greater fear of black men as rapists than they had of white men committing the same crime." *Crucible of Race*, 183.

prostitutes, a defiant North Carolina newspaper posited that "in the South it has been traditional . . . that its white womanhood shall be held inviolate by an 'inferior race'." Protection applied to every white woman regardless of class—whether she was a "spotless virgin or a 'nymph de pavé'."[27] Clearly Southampton County residents considered Sydney Jordan the latter, and, as such, she ultimately forfeited any privilege of protection, if indeed it had ever been extended to her.

A quick overview of southern statutes suggests that legislators considered sexual assault a heinous crime whether committed by black or white males. Eight slaveholding states at various times before the Civil War prescribed death for white rapists.[28] Death sentences, however, seem to have been reserved for white rapists of children.[29] The more prevalent punishment for white offenders was imprisonment. Of the southern states and territories that punished white rapists with prison, the terms ran the gamut from Georgia statutes, being the least harsh (from two to twenty years), to Alabama, Louisiana, and Mississippi statutes, which at one time or another sentenced white offenders to life imprisonment.[30] Virginia prison registers reveal that the sentences of white men serving time for rape or attempted rape ranged from three

[27] Winston-Salem *Journal*, October 15, 1932, quoted in Carter, *Scottsboro*, 105. See also Goodman, *Stories of Scottsboro*, 218–20.

[28] Alabama, *Digest of the Laws* . . . (Toulmin, 1823), p. 207; Arkansas, *Acts* . . . (1842–43), p. 19; Florida., *Acts* . . . *of the Territory* . . . (1828), sec. 19, p. 53 and *Acts* . . . *of the Territory* . . . (1832), no. 55, sec. 2, p. 63 ; Louisiana., *Acts* . . . *of the Territory of Orleans* (1806), ch. 29, sec. 1, p. 122 and *Acts* . . . (1855), no. 120, sec. 4, p. 130; Mississippi, *Laws*. . . (June 1822), sec. 11, p. 207; North Carolina, *Revised Code* (Moore, Biggs, and Rodman, 1855), ch. 34, sec. 5, p. 203; South Carolina, *Alphabetical Digest of the Public Statute Law* (3 vols.; Brevard, 1814), I, title 21, sec. 17, p. 77; and Virginia, *Statutes at Large* (3 vols.; Shepherd, 1835–1836), I, 178 (Act of 1792). On antebellum southern rape statutes and race see Getman, "Sexual Control in the Slaveholding South," 134–36; Jennifer Wriggins, "Rape, Racism, and the Law," *Harvard Women's Law Journal*, VI (Fall 1983), 105–6; and Bardaglio, "Rape and the Law in the Old South," 751–60.

[29] *State* v. *Alfred Goings* (alias Terry), 20 N.C. 289 (1839); *State* v. *Jesse Farmer*, 26 N.C. 224 (1844); and Bertie County Superior Court Minutes, March 19, 22, 23 and September 16, 1844 (North Carolina Department of Cultural Resources, Division of Archives and History). Death was not the automatic penalty for white rapists of young girls, however. In 1810 William Dick, a white laborer from Monroe County, Virginia, allegedly raped Nancy Maddy, a girl between ten and twelve years old. Dick was sentenced to eighteen years of solitary confinement in the state penitentiary but was pardoned by the governor after fourteen years. See September 11–20, 1810 folder, box 168 (August–September 1810), LR, VEP.

[30] Alabama, *Acts* . . . (1840–41), ch. 3, sec. 14, p. 124 (life imprisonment); Arkansas, *Acts* (1838), sec. 4, p. 122 (5 to 21 years); Georgia, *Acts* . . . .(1816), sec. 33, p. 151 (2 to 20 years hard labor); Kentucky, *Acts* . . . .(1801), ch. 67, sec. 7, p. 120 (10 to 21 years); Louisiana, *Acts* . . . *of the Territory of Orleans* (1804), ch. 50, sec. 2, p. 416 (life imprisonment at hard labor); Mississippi, *Laws* (1839), tit. III, sec. 22, p. 116 (not less than 10 years); Missouri, *Revised Statutes* . . . (W. C. Jones, 1845), art. II, ch. 47, sec. 26, p. 348 (not less than 5 years); Tennessee, *Acts* . . . (1819), sec. 4, pp. 195–96 (5 to 15 years) and *Acts* (1829), ch. 23, sec. 13–14, p. 29 (10 to 21

to twenty years, although most averaged between ten and seventeen years.[31]

The trend of rape statutes through the Civil War, nonetheless, was to lessen the punishment for convicted white rapists while retaining capital punishment for African Americans, free and slave.[32] As an example, a Virginia law passed in 1847 called for convicted white rapists to serve from ten to twenty years in prison while prescribing the death penalty for black men.[33] In most southern states by the beginning of the Civil War, racial disparity permeated sexual assault statutes. Rape statutes were equally discriminatory in defining the victims. Females of color, whether free or slave, assaulted by white men found virtually no redress from the judicial system. The widely held belief in the depraved and promiscuous nature of African American women coupled with a female slave's status as the property of a white man shielded rapists, whether black or white, from prosecution.[34]

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years); Texas, *A Digest of the General Statute Laws* (Oldham and White, 1859), tit. 17, ch. 6, art. 529, p. 523 (5 to 15 years); Virginia, *Digest of Laws* (Tate, 1823), p. 127 (Act of 1819) (10 to 21 years); and *Code of Virginia* (Patton and Robinson, 1849), tit. 54, ch. 191, sec. 15, p. 725 (10 to 20 years).

[31] State Penitentiary Prisoner Registers, 1863–1876, Records of the Department of Corrections, Record Group 42 (Library of Virginia).

[32] Peter Bardaglio has put forth the racial disparity in the composition of antebellum southern rape statutes as evidence of southern white anxieties about "black sexual aggression." "Rape or attempted rape of a white woman by a bondsman demanded especially fierce retribution because it challenged slavery and the racial order of southern society." Bardaglio, "Rape and the Law in the Old South," 752 and 755. There are limitations, however, on forming societal generalizations on the basis of statutes and/or appellate decisions. William M. Wiecek cautions that "statutes are not evidence of actual social conditions. When a statute prohibits a certain type of behavior . . . it is no more reasonable to infer from the enactment of the statute that such behavior was common than to infer that it was rare. Nor can we assume that the statutes were rigorously enforced by vigilant authorities." Wiecek, "The Statutory Law of Slavery and Race in the Thirteen Mainland Colonies of British America," *William and Mary Quarterly*, 3d Ser., XXXIV (April 1977), 279. Similarly, G. Edward White outlines what he considers to be the problems of legal historians relying too heavily upon appellate law. White, "The Appellate Opinion as Historical Source Material," *Journal of Interdisciplinary History*, I (Spring 1971), 491–509. See also Friedman, *Crime and Punishment*, 256.

[33] Virginia, *Acts*, (1847–48), tit. 2, ch. 3, sec. 15, p. 97 (pertaining to whites) and tit. 2, ch. 12, sec. 4, p. 125 (pertaining to slaves). For statutes specifically stating that African Americans who had been convicted of rape or attempted rape of white females were to be sentenced to death, see Alabama, *Acts* (1830–31), sec. 1, p. 13 and *Acts* (1840–41), ch. 15, sec. 3, p. 188; Georgia, *Acts* (1816), sec. 1, p. 15; Kentucky, *Acts* (1802), ch. 53, sec. 19, p. 116; Louisiana, *Acts* (1806), ch. 33, sec. 7, p. 198; Mississippi, *Acts* (1813), sec. 6, p. 10; North Carolina, *Acts . . .* (1823), ch. 51, p. 42; South Carolina, *Acts . . .* (1843), no. 2893, p. 258; Tennessee, *Public Acts* (1835–36), ch. 19, sec. 10, p. 92; Texas, *Digest of the Laws* (Hartley, 1850), art. 2539, p. 777; and Virginia, *Acts* (1847–48), tit. 2, ch. 12, sec. 4, p. 125 (slaves) and tit. 2, ch. 13, sec. 1, p. 126 (free blacks).

[34] On the rape and sexual exploitation of enslaved females see Thelma Jennings, "'Us Colored Women Had to Go Through a Plenty': Sexual Exploitation of African American Slave Women," *Journal of Women's History*, I (Winter 1990), 45–74; Clinton, *Plantation Mistress*, 201–22; Clinton, "'Southern Dishonor,'" 57–58 and 61–68; Clinton, "Bloody Terrain," 315;

Though statutes expressly addressed race, issues of class or "respectability" are not mentioned in laws on rape. In applying these statutes to individual cases, judges, jurors, and community members nonetheless took it upon themselves to utilize juridical prerogative

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Darlene Clark Hine, "Rape and the Inner Lives of Black Women in the Midwest: Preliminary Thoughts on the Culture of Dissemblance," *Signs: Journal of Women in Culture and Society*, XIV (Summer 1989), 912; Wriggins, "Rape, Racism, and the Law," 118–19; Berry and Blassingame, *Long Memory*, 117–18; Alexander, *Ambiguous Lives*, 64–66; Harriet A. Jacobs, *Incidents in the Life of a Slave Girl. Written by Herself*, edited by Jean Fagan Yellin (Cambridge, Mass., and London, 1987), 27–29; D'Emilio and Freedman, *Intimate Matters*, 100–103; Jacqueline Jones, *Labor of Love, Labor of Sorrow: Black Women, Work, and the Family from Slavery to the Present* (New York, 1985), 149; McLaurin, *Celia*; Genovese, *Roll, Jordan, Roll*, 422–29; White, *Ar'n't I A Woman?*, 152–53 and 164–65; Stampp, *Peculiar Institution*, 353–61; Brenda Stevenson, "Distress and Discord in Virginia Slave Families, 1830–1860," in Bleser, ed., *In Joy and Sorrow,* 121–22; Getman, "Sexual Control in the Slaveholding South," 142–51; Burnham, "Impossible Marriage," 199–200; and Steven E. Brown, "Sexuality and the Slave Community," *Phylon,* XLVII (Spring 1981), 7–8. Though rare, there are a few instances of men brought before southern courts charged with sexually assaulting women of color; for instance, in 1797 a Virginia slave was hanged for the rape of a mulatto woman. 1799 folder, Condemned Blacks Executed or Transported, Condemned Slaves (hereinafter CS), Auditor of Public Accounts (hereinafter APA), Record Group 48 (Library of Virginia). Three cases of rape of female slaves by male slaves appeared before the Virginia courts from 1850 through 1858. In 1856 Coleman was found guilty of raping a slave child, Harriet, and was sentenced to transportation out of the country. CS, Transported, 1857 and December 1856 folder, LR, VEP. Charges were brought and subsequently dropped against William, a Loudoun County slave, for raping a female slave in 1858. Schwarz, *Twice Condemned*, 293*n*21. John was sentenced to transportation for the rape of a slave in Spotsylvania County. Bond dated January 21, 1850, Bonds for Transportation of Condemned Slaves (hereinafter Bonds) 1840–1857 (Library of Virginia); and Schwarz, *Twice Condemned*, 293*n*21. Several cases of slaves raping free women of color have also been found. Tom, a slave in New Kent County, was sentenced to hang for raping Dolly Boasman, a married free mulatto woman. He was spared and transported instead. CS, Transported, 1810 and January 11–20 folder, box 164 (January–February 20, 1810), LR, VEP. Charles, a Halifax County slave, was sentenced to transportation for the rape of Ann Freeman. Halifax County Court Minute Book, July 1857, p. 341 (Library of Virginia) (microfilm reel no. 73); CS, Transported, 1857; and Bond dated September 18, 1857, Bonds 1840–1857. In December 1864 Henry Robertson, a Wythe County slave, was tried for the rape of Mary Jane Wilson, a twenty-eight-year-old free woman of color. Pardon Papers, January–April 1865, LR, VEP. The Raleigh *Register and North Carolina Gazette* noted on April 12, 1836, that Jones Kiff (no mention is made of his race) was tried and acquitted in the rape of an eighty-year-old free black woman. Only one case of white-on-black sexual assault appears to have resulted in conviction. In 1858 Edward B. Ledbetter of Sussex County, Virginia, was sentenced to ten years in the state penitentiary for the assault and rape of a twenty-four-year-old "free negress." Relying on a jury's recommendation for clemency, however, the governor pardoned Ledbetter, who was imprisoned three years later for raping another free woman of color. August 1863 folder and document dated December 1861, Pardon Papers, January–June 1862, and July–November 1863, LR, VEP. Despite these instances of African American women bringing charges of rape before officials, their numbers are indeed few. Since most statutes specified the race of the victim in sexual assault as white, females of color found that by and large statutes did not protect them from rape. Such was the judicial logic in 1859 in the case of *George* v. *The State of Mississippi* in which a male slave was found guilty of raping a female slave and sentenced to hang. That state's supreme court ruled in favor of the convicted rapist, finding that the statutory definition of rape was race-specific. In fact, one justice reasoned, "The crime of rape does not exist in this State between African slaves." *George* v. *State*, 37 Miss. 316 (1859). A Mississippi statute passed in 1859 did, however, outlaw the rape of a negro or mulatto child under the age of twelve. See Mississippi, *Laws* (1859–60) ch. 62, sec. 1, p. 102.

and frequently applied such standards to cases of sexual assault, as in the case of Sydney Jordan.[35] Jordan was no doubt one of the Old South's "unruly women" portrayed in Victoria Bynum's recent study of the same name.[36] Jordan, who was white but outside the circle of the genteel, defied rigid race and gender conventions by engaging in illicit sexual behavior with African American men. Because she did so and was caught at it, the protection bestowed upon her, presumably because of her whiteness, was withdrawn. In short, she had not behaved as a proper white woman should and was therefore not to be treated as one.[37] Instead, the overseers of her community, white men who were probably her social betters, accused her of perjury and sought clemency for the black man whom she alleged had sexually violated her. Her race failed to shield her from assaults on her moral character.[38]

Like Sydney Jordan twenty years later, Sarah Sands of Henry County, Virginia, claimed to have been raped by an African American man. She accused a slave named Jerry owned by Edward Osborne. Also like Jordan, Sands was reported to have kept company with black

[35] Two noted legal historians have observed that while punishments prescribed in sexual assault statutes grew harsher for men of color, juries at times appeared reticent in administering severe penalties. See A. Leon Higginbotham Jr. and Barbara K. Kopytoff, "Racial Purity and Interracial Sex in the Law of Colonial and Antebellum Virginia," *Georgetown Law Journal*, LXXVII (August 1989), 2017–18.

[36] Victoria E. Bynum, *Unruly Women. The Politics of Social and Sexual Control in the Old South* (Chapel Hill and London, 1992).

[37] For more on white women whose sexual behavior deviated from prescribed antebellum mores and beliefs about those women, see Bynum, *Unruly Women*, especially Chapter 4, "Punishing Deviant Women: The State as Patriarch"; Hodes, "Sex Across the Color Line," 41–42 and 63; Hodes, "Wartime Dialogues," 235; Clinton, *Plantation Mistress*, 204 and 210; Clinton, "'Southern Dishonor'," 58–60; D'Emilio and Freedman, *Intimate Matters*, 96 and 103–4; James Hugo Johnston, *Race Relations in Virginia and Miscegenation in the South, 1776–1860* (Amherst, Mass., 1970), 253–68. Several works assert that women of the planter class were monitored so closely that they did not have the opportunity to engage in illicit sexual liaisons. See Clinton, *Plantation Mistress*, 72–74, 102, and 109; Fox-Genovese, *Within the Plantation Household*, 208 and 241; Wyatt-Brown, *Southern Honor*, 293–94, 298, and 315–19. Wyatt-Brown further argues that nearly all white women who willingly engaged in sexual relationships with African American men were "women with defective notions of their social position" (p. 315) and were quite probably "mentally retarded or else had a very poor self-image" (p. 316).

[38] Of course white women who brought sexual assault charges against white men were also subjected to interrogation about their sexual histories. See Edwards, "Sexual Violence, Gender, and Reconstruction in Granville County," 244. See also the following cases of two white Virginia males: In 1846 eighteen-year-old William B. O. Franklin was found guilty of raping Mrs. Lucinda Dearing, who some petitioners claimed was a lover of Franklin's who cried rape to "appease the jealousy of her husband." December 1846 folder, box 384 (November–December 1846), LR, VEP; and William Ball, a father, husband, and soldier during the Civil War, was convicted of raping a woman described as a "common strumpet" and was sentenced to twelve years in the state penitentiary. October 1863 folder, Pardon Papers, July–November 1863, and January–April 1865, LR, VEP.

men. Jerry was tried in the local court in 1807, found guilty, and sentenced to be hanged. A petition to the governor penned by Jerry's legal counsel, Peachy R. Gilmer, purported to reflect the sentiments of others who attended the trial and argued for a reduction in sentence from execution to transportation.[39] Gilmer based his request on Sands's indiscreet sexual history and cited Sands's "very infamous character" and her status as another man's concubine. And if a questionable character weren't enough to erode Sands's credibility, the petition places in evidence the woman's size. Gilmer portrayed Sands as "large and strong enough to have made considerable resistance if she had been so disposed, yet there was by her own confession no mark of violence upon any part of her."[40]

Undoubtedly Jerry's counsel presented this evidence at the 1807 trial, but the court remained unconvinced and rendered a guilty verdict. A number of the white residents of the community believed that the honor of such a deviant, debased woman was not worth the life of the rapist, and they took their case to the governor, who granted Jerry a reprieve.[41]

A group of Virginians made a similar appeal in 1803 on behalf of Carter, a slave found guilty of raping a poor white woman who, like Jordan and Sands, had a reputation for consorting with African American men:

> Carter did commit the said offense—from the whole of the evidence your subscribers felt themselves bound by law to pass sentence of death upon the said Carter. Yet for reasons, hereinafter mentioned the court aforesaid are of the opinion that the said Carter is a proper object of mercy . . . [I]t appeared that the said Catherine Brinal was a woman of the worst fame, that her character was that

[39] Six years prior to this case the Virginia legislature passed a law allowing the governor and the executive council to sell condemned slaves to persons who promised to carry them out of the country, never to return to Virginia. This allowed the state to recoup some of the loss that resulted from compensation of slaveowners of condemned slaves. From 1801 through 1864, fifty-four Virginia slaves were transported after their conviction of rape or attempted rape. In Schwarz, *Twice Condemned*, 27–28, and Schwarz, "The Transportation of Slaves from Virginia, 1801–1865," *Slavery and Abolition: A Journal of Comparative Studies,* VII (1986), 216–21. Michael Hindus asserts in his study of antebellum South Carolina that high rates of executions of slaves (six per year in the period 1800–1855) indicate that "[b]anishment was clearly not a complete substitute for execution." Hindus, "Black Execution Under White Law," 596–97.

[40] Letter of June 4, 1807, from P. R. Gilmer, June 1–18 folder, box 145 (May–June 1807), VEP. It is worth noting that the same arguments presented in this case by the defense—a woman's past sexual history, no evidence of force—were typically used well into the twentieth century to defend men against the charge of rape. It has only been relatively recently that statutory reforms have been initiated to protect victims of sexual assault and empower prosecutors to disallow such evidence. See Brownmiller, *Against Our Will*, 371–74, and 384–87.

[41] June 1–18, 1807 folder, box 145, VEP; and CS, Transported, 1807.

> of the most abandoned in as much as she (being a white woman) has three mulatto children, which by her own confession were begotten by different negro men; that the said Catherine has no visible means of support; that from report she had permitted the said Carter to have peaceable intercourse with her, before the time of his forcing her.[42]

According to the petitioners, having previously consented to "peaceable" sexual relations with Carter, Catherine Brinal effectively lost her right to deny him sex at any future time. Brinal, and white women like her who flaunted prevailing social conventions about race and sex, risked the embarrassment of the public airing of their social histories. Carter cheated the executioner and was transported out of the state.[43]

Consider also the case of Cato, a Florida slave accused in 1860 of raping Susan Leonard, a white woman whom twelve defense witnesses described as a "common prostitute." Nevertheless, the lower court judge instructed the jury that if they were satisfied that Cato had "carnal knowledge . . . against her will" they must find Cato guilty, which the jury ultimately did. On review, the Florida Supreme Court acknowledged its own role as judicial patriarch and balanced "the fact that a most foul offence" had been perpetrated against the consideration that the "life of a human being" was dependent on the outcome.[44] Mindful of its commitment to oversee justice of accused slaves, the court boasted of the "crowning glory of our 'peculiar institution,' that whenever life is involved, the slave stands upon as safe ground as the master." The court was disturbed by the "abundant proof" that the alleged victim and her friend who testified for the state were "common prostitutes." Lacking corroborative testimony, the court refused to turn its back on Cato. Quoting the seventeenth-century English jurist Lord Chief Justice Matthew Hale, the court sympathized that "rape is an ac-

[42] May 9, 1803, LR, VEP, as quoted in Johnston, *Race Relations in Virginia*, 260.

[43] *Ibid.*; and CS, Transported, 1803. While transportation was certainly preferable to death, one shouldn't underrate the possible harshness of this punishment. Banishment most assuredly meant separation from one's family network. Furthermore, masters frequently threatened their slaves with sale to states in the Deep South. Slaves and masters alike seem to have believed that conditions were far worse there than in the upper tier of slaveholding states. My appreciation to Philip Schwarz for making this point.

[44] *Cato* v. *State,* 9 Fla. 163 (1860), at 165 (first quotation), 166 (second quotation), and 173 (last two quotations). This appellate reasoning was not extraordinary in the sense that a number of southern judges and justices seem to have fancied themselves paternalists of last resort. This tendency for judges to assume the role of judicial patriarch appears to be part of a wider nineteenth-century trend observed by Michael Grossberg in issues of domestic relations. *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill and London, 1985), 291–307.

cusation easily to be made and hard to be proved and harder to be defended by the party accused . . . ." The high court vacated the execution decree and ordered a new trial.[45]

Although not all cases led to reprieves or pardons of convicted African American rapists, the defense could be counted on to raise questions about the character of the female accuser. In the 1829 rape case of Lewis, a Virginia slave, two witnesses tarnished the reputations of the accuser, Amy [Amey] Baker, and her housemate, who had been an eyewitness to the assault, with accusations of debauchery and sexual impropriety.[46] Five other witnesses, however, took the stand to defend the reputations of the two women. As Baker, who was forty-five years old, and her live-in companion, "old Mrs. [Drucilla] Kirkland," recounted, in the dark hours before daybreak on May 23 the accused came to Baker's house demanding to be let in. After the women refused to admit Lewis, he broke down the door. They claimed that Lewis brutally raped Amy Baker four times over a two-hour period while Mrs. Kirkland hid under the bed. Soon thereafter the accused dozed off, and the two women fled to the home of a neighbor, Burwell Coleman, whose son, Richard Coleman, returned with them to their house. Coleman groped blindly in the dark and found the intruder still lying on the bed clothed only from the waist up. After a brief struggle Coleman subdued the alleged rapist and demanded to know what had driven the slave to such unthinkable behavior. Lewis replied that he did not know but he reckoned he was drunk.[47]

The court-appointed defense counsel surely faced a difficult task since the accused had been apprehended partially clad at the scene. Lewis's attorney, Alexander G. Knox, appears to have formulated a three-pronged strategy as revealed in the depositions of various witnesses. First, he challenged the women's ability to identify the accused by pointing out that the assault had taken place entirely in the dark. Upon cross-examination Baker flip-flopped a bit, at first claim-

[45] *Cato* v. *State*, at 174, 165, 181, and 186. On Lord Hale's quote on rape see Brownmiller, *Against Our Will*, 369.

[46] Philip J. Schwarz refers to this case also, although he depicts Baker as a free black. (*Twice Condemned*, 207). He bases this characterization upon testimony to the court by Baker herself in which she mentions having lost her "register." Neither the 1820 nor 1830 censuses list Baker. The court documents repeatedly refer to her as a "free white woman," so if she were a woman of color, the court did not recognize her as such. Contradictory classifications on the basis of race were not at all out of the ordinary, exemplifying, according to Adele Logan Alexander's recent work on free Georgian women of color, "the shifting, questionable, and amorphous lines of both race and freedom." Alexander, *Ambiguous Lives*, 63.

[47] June 1–20, 1829 folder, box 311 (May 1–July 20, 1829), LR, VEP.

ing that there had been sufficient moonlight to identify the rapist but then contradicting herself somewhat by admitting that as dawn broke the light had not carried to her attacker. Despite the darkness, however, upon seeing the prisoner the next day she was confident that he had been her assailant.[48]

The presence of an eyewitness was rare in a rape case since most rapists targeted unaccompanied females in desolate or distant locations, out of earshot of bystanders. The testimony of Mrs. Kirkland, then, must have been considered crucial in the prosecution's case.[49] Nonetheless, discrediting Kirkland's testimony was the second prong in Knox's strategy to vindicate Lewis. At first glance, Mrs. Kirkland seems to have made a poor eyewitness to the crime since by her own admission she spent the entire assault hiding beneath a bed, presumably the very bed where the rape took place. She claimed, however, that at some point she emerged from her hiding place and "at the risque of her life" made up a light by which she was able to identify the assailant who was on top of Amy Baker. Knox, no doubt skeptical of this testimony (Baker had not mentioned Kirkland's putting on a light), then took another tack with Kirkland. He inquired about her marital and maternal status, thus insinuating her ignorance of coitus and therefore her unreliability in testifying that sexual intercourse had in fact taken place in her presence. This deft defense maneuvering placed Kirkland in an awkward position. If she admitted to having had intercourse outside of marriage, jurors would in all likelihood dismiss her testimony as unreliable due to the woman's bad character. If she denied having had intercourse, she lent weight to the defense claim that she may not have known intercourse if she saw it. Kirkland appears by her answer to have been piqued by Knox's intimation and replied rather indignantly that indeed she had neither married nor borne children but that she certainly "had seen such acts of [intercourse performed] and knows very well that the prisoner was in the act of enjoying Mrs. Baker."[50]

[48] *Ibid.*

[49] Drucilla Kirkland is repeatedly referred to as "Mrs. Kirkland" although she revealed during her deposition that she had never married. More curious is the nature of her relationship with Amy Baker, which was never addressed by court officials or by the two principals themselves. Neither woman appears in the federal decennial censuses of 1820 and 1830.

[50] June 1–20, 1829 folder, box 311, LR, VEP. Mrs. Kirkland's insistence at having personally witnessed coitus suggests an extraordinary lack of privacy, similar to that documented in eighteenth-century New England. See Nancy F. Cott, "Eighteenth-Century Family and Social Life as Revealed in Massachusetts Divorce Records," *Journal of Social History*, X (Fall 1976), 20–43.

The third prong of the defense strategy was to impugn the character of Amy Baker and her friend Drucilla Kirkland and, by implication, to question their veracity. One of only two witnesses who testified to Baker's dubious history was William Coleman, who claimed that he "had been to the house of Mrs. Baker for the purpose of unlawful intercourse with females and have known others to do so." Coleman reported that her neighbors were suspicious of Mrs. Baker. He did not consider her to be a "respectable woman" and would not believe her "as soon as he would a respectable woman." Alexander Pritchett, the second defense witness, did not admit to engaging in illicit sexual relations with women at the Baker house as did Coleman, but reported that on two occasions he had observed several Negro men on the premises, who were, by implication, up to no good.[51]

The prosecution summoned five character witnesses to refute the accusations levied by Coleman and Pritchett about Baker and Kirkland. Their testimony variously described Baker as "industrious," "always correct," and of "good character." Samuel Farrar claimed never to have heard anyone speak ill of Amy Baker and discounted allegations that she consorted with black men, reasoning that had Baker "been in the habit of entertaining slaves" he would have heard about it.[52]

Perhaps the sheer number of witnesses who testified to Amy Baker's good character provides a good reason to doubt that she "entertained" slaves—which, even if proven true, obviously does not prove that she lied about being sexually assaulted. But Knox's finding even one witness willing to admit in public to having had sexual intercourse with women at Baker's home is surprising. Given the likelihood of swift admonishment from family and community members, public acknowledgement of illicit sexual relations is astonishing. Such an admission by a white male was indeed aberrant and, in terms of evidence, was probably unnecessary; in most rape cases sufficient proof of a woman's bad character was gleaned from the hearsay testimony of people who had merely heard about the alleged victim's reputation through the neighborhood gossip network.[53]

Quite possibly the most revealing evidence pertaining to Baker's status in the community is her own testimony. Her deposition is striking for its explicit, graphic details and bawdy language. Typically, de-

[51] June 1–20, 1829 folder, box 311, LR, VEP.
[52] *Ibid.*
[53] *Ibid.*

positions contained language that was carefully couched, especially any testimony relating to a sexual act, usually cryptically referred to as "it." Drucilla Kirkland, for instance, testified to the intruder's bellowing that he "was sent there for it and was told that there was a plenty of it there." Amy Baker's testimony defied such conventions. Her deposition reveals a complete lack of inhibition in retelling the details of the crime she alleged. She repeated verbatim what the accused had said upon entering the house. "He came for cunt and cunt he would have, that he had been told that there was a plenty of it there and he would have his satisfaction before he left." Nor did Baker choose to mince words when describing a brutal sexual assault. She testified that the prisoner penetrated her four times and during one instance he threw "her head over the bedstead and forced her legs over the prisoner's shoulders and used such violence in the penetration of the act as almost to have deprived her of her life."[54]

Baker's choice of language in retelling her account of the assault, her decision not to mince words, suggests a conscious effort to forgo any pretense about her status in southern society. Nor did the court transcriber feel compelled to "clean up" her deposition. At the very least the evidence suggests that Baker lived on the margins of respectability in the eyes of this white community. The guilt or innocence of Lewis the slave at times seems to have taken a back seat to the contest over Amy Baker's reputation.

In the end, the court remained unswayed by allegations of Baker's past sexual improprieties and found Lewis guilty of rape. Possibly Lewis's admission that he had been drunk at the time of the alleged assault made the attack seem more plausible to the jury. Or perhaps the well-documented brutality of the assault ruled out Baker's compliance.[55] These factors, combined with Lewis's capture at the scene, no doubt were crucial in the jury's decision to levy a guilty verdict and death sentence with no attendant recommendation for mercy. In contrast to cases cited previously in this study, this case demonstrates that not every incident of an accused black rapist led to reprieve. Considering the weight of the evidence against Lewis, however, what is surprising is not so much his conviction and subsequent hanging as the

[54] *Ibid.*

[55] Amy Baker testified that Lewis assaulted her with such "great violence" that after the assault she was "so weak that she could scarcely move her body." Drucilla Kirkland swore that after the assault and while the accused slept she had to bathe Baker's legs and feet and minister to her before Baker could walk. *Ibid.*

vigor with which his defense was conducted.[56] And the typical form of an ambitious defense was an attack on the character of the white accuser.

Even white female children who claimed to have been sexually assaulted by African American men found their lives probed for clues of past sexual indiscretion or immoral conduct. Few good things were said by anyone about the character and integrity of Rosanna Green, an eleven-year-old orphan servant girl who lived in Wythe County, Virginia, with the family of Peter Kincer. Neighbors, slaves, and of course Kincer himself, rallied in 1829 to defend Gabriel, a slave owned by Kincer, from Rosanna's charge of rape. Another Kincer slave testified to having heard reports that Green had "behaved badly with a black boy in the neighborhood." In addition, Green had a reputation for "telling stories" and "making mischief," which seriously jeopardized the credibility of her testimony. The court found Gabriel guilty, but extenuating circumstances led the court to recommend leniency.[57]

By no means was sympathy for the slave universal. In a letter to the governor one Wythe County resident urged the executive to disregard pleas for leniency. Of Gabriel, the accused rapist, Alexander Smyth wrote: "I think it right to say, that I apprehend him a proper subject to be made an example, and that an example is required. It is not many years since a man suffered emasculation for an attempt on his mistress; and a few days since a youth received 120 lashes from his master for an attempt on a girl. This fellow seems to be 40, and is notorious as a thief." With the letter Smyth enclosed a newspaper clipping that conveyed sympathy for the orphan girl. "[H]ad her father been living, or, had she have had any natural protector, who had reaked *[sic]* the vengeance due to such an offence, in the blood of the perpetrator, we could never have consented to his punishment for the offence."[58] In other words, male kin would have sought personal justice through revenge and not left the girl to be vilified in the local court. Likewise, one can infer that the author of the piece sensed class bias in the adjudication process. Had Rosanna Green not been a servant girl, the outcome might have been substantially different. In the end,

[56] Lewis was executed July 24, 1829. See CS, Executed, 1829.
[57] June 1–20, 1829 folder, box 311, LR, VEP.
[58] June 21–30, 1829 folder, *ibid.*

Smyth's appeal went unheeded, and Gabriel was sold and transported out of Virginia.[59]

Indeed, nonslaveholding whites at times openly displayed disgust at what some believed to be the blatant economic motives of a master's behavior in trying to exonerate his slave from the charge of rape. This is evident in the 1831 rape case of Dick, a slave belonging to Hamilton Rogers. Dick was charged with attempting to ravish Pleasant Cole, wife of Peter Cole, of Leesburg, Virginia. Mrs. Cole successfully fought off her attacker, struggling with him for about fifteen minutes before a friend, hearing her screams, frightened Dick off. Cole managed to scratch Dick's face, a fact entered as evidence by the prosecution. Cole boasted that she "kept him off by catching [Dick] by his privates."[60]

Throughout the trial witnesses described Cole as a "woman of truth." One witness swore that he made some inquiries of her character "to do justice to the prisoner" and found everyone spoke "in the highest terms of her character."[61] The jury found Dick guilty and ordered his execution. However, as a last resort, Dick's owner, Hamilton Rogers, and his defense counsel quickly fired off letters to the governor requesting a reduced sentence, a request made more difficult because the jury had made no recommendation for leniency. On Dick's behalf, attorney Burr W. Harrison and Hamilton Rogers, Dick's owner, cited mitigating circumstances, including Mrs. Cole's uncertainty about the identity of the perpetrator and discrepancies in the testimony of various prosecution witnesses. Harrison also cited Dick's age (which he did not state) and the fact that "no actual injury . . . [was] sustained by the object of his attempt." No mention is made of Mrs. Cole's character with the exception of a single unexplained reference to her "indiscretion."[62] In addition to Harrison and Rogers, at least one other petitioner, who identified himself as "a member of the court who found him [Dick] guilty," concurred that mitigating circumstances, foremost being the very severe punishment, warranted mercy.[63]

Other members of the community, probably friends of the Coles,

[59] 1806–1839 folder, Bonds for Transportation, and August 7, 1829 entry in "A list of slaves and free persons of color received into the penitentiary of Virginia for sale and transportation, June 25, 1816–Feb 1, 1842," both in APA .

[60] July 1831 folder, box 320 (July–August 1831), LR, VEP.

[61] *Ibid.*

[62] Letter from Hamilton Rogers, July 12, 1831, and letter from Burr W. Harrison, July 7, 1831, *ibid.*

[63] Letter dated July 9, 1831, Leesburg [author's name illegible], *ibid.*

got wind of the letter-writing campaign on Dick's behalf and put pen to their own angry grievances. The complainants accused Hamilton Rogers, Dick's master, of cronyism; he reportedly had persuaded a sheriff, a relative of his, to investigate the character of Mrs. Cole. To the delight of the petitioners the inquiry yielded only that she was a woman of "unblemished character." They were appalled at the naked self-interest of the slaveholder. Venting class discord, the petitioners pondered the future safety of the community if Dick were set free, especially for "females in the humble walks of life, who have not thrown around them the protection of wealth and influential friends," an obvious dig at Hamilton Rogers. These folks, who seem to have shared a greater identification with the "more humble walks of life" than with Rogers, observed that in this case the availability of legal protection ran along class lines.[64] Pleasant Cole, decidedly not a member of the slaveholding class, lacked money and powerful friends but did have a good reputation and neighbors who were outraged not only at the greed of a slaveholder more interested in his pocketbook than in justice and community safety but also at the legal system's apparent favoritism to the rich. In an analysis of community, class, and crime in the Old South, Bertram Wyatt-Brown argues that non-elites chafed at the bias they observed in the judicial process. "When decisions seemed flagrantly generous toward those with powerful friends, money, and batteries of legal talent, feelings of class animosity could be aroused."[65] No doubt aware that the case had created a political hornet's nest, which he was not eager to disturb, the governor denied Hamilton Rogers's appeal, and the death sentence was allowed to stand. Dick was executed, and his owner had to settle for $400 in compensation from the state, no doubt less than the market value of the slave.[66]

[64] Petition dated July 11, 1831, Leesburg, *ibid.*

[65] Wyatt-Brown, "Community, Class, and Snopesian Crime," 189.

[66] July 1831 folder, box 320, LR, VEP; and CS, Executed, 1831. In 1840 the Virginia legislature modified its compensation policy to require that the value of the condemned slave be adjusted to market value and the purchaser be told of the slave's offence.Virginia *Acts* (1839–40), ch. 61, sec.1, p. 51. Compensation rates for executed slaves varied widely over time and from state to state. Georgia, for example, offered slaveowners no compensation whatsoever. (Edwards, "Slave Justice in Four Middle Georgia Counties," 266). By most accounts colonial compensation rates appear to have been liberal, but the rates diminished as the nineteenth century advanced, perhaps because payments for compensation grew so costly. For example, the Virginia legislature appropriated $265,500 from 1835 through 1863 as compensation to slaveowners for executed slaves. (Virginia, *Acts*, for the years from 1835 through 1863). It seems highly unlikely that slaveholders in the antebellum period would have been fully compensated for executed slaves, and, therefore, they might well have been motivated to salvage the value of their property by seeking criminal penalties short of death, such as sale and transportation. For the colonial

Class chafing is also observed in a letter to Virginia's governor following the 1846 trial of Anthony, a King George County slave. "Suppose for instance that she [the alleged victim] had . . . been of a rich family . . . you know he [the accused rapist] would never have gotten to gaol, but because she was poor she must suffer . . . ." The governor was unmoved by the plea and had Anthony transported out of the state.[67]

The oft-cited 1825 North Carolina case of Jim and his alleged rape of a young white servant also reveals class divisions among southern whites.[68] The numerous documents that this case generated permits a rare glimpse into what quite plausibly had been consensual sex between a poor white servant woman and a slave, which was tolerated until the resulting pregnancy forced the community to confront the "taboo" relationship.

Polly Lane, a white servant about eighteen years old, and Jim, a slave, both worked in the home of Abraham Peppinger, an elderly man. Jim was one of several slaves owned by Peppinger. According to Polly Lane's testimony at Jim's subsequent trial, one morning in mid-August 1825 Jim overtook her, forced her to drink brandy, and then raped her several times. Because Jim had threatened her, she claimed, she did not call out for help until well after dark. Another slave, Dick, after hearing the commotion sneaked to where Polly and Jim were. Dick claimed that he had heard Jim implore Polly to quiet down and then heard Polly say "that if I am left in the fire I am now in I shall surely die." Dick then made himself known to the couple whereupon

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and revolutionary periods see Marvin L. Michael Kay and Lorin Lee Cary, "'The Planters Suffer Little or Nothing': North Carolina Compensations for Executed Slaves, 1748–1772," *Science and Society*, XL (Fall 1976), 288–306; Taylor, "Humanizing the Slave Code of North Carolina," 329; Hindus, "Black Justice Under White Law," 595–96; Crow, *Black Experience in Revolutionary North Carolina*, 25–26; Phillips, "Slave Crime in Virginia," 336; Wood, *Black Majority*, 279–281; and Schwarz, *Twice Condemned*, 11, 20, 40, 52–53, and 73. For the antebellum period see Hindus, "Black Justice Under White Law"; Taylor, "Humanizing the Slave Code of North Carolina," 329; and Phillips, "Slave Crime in Virginia," 336–40. On the economic benefits of transporting condemned slaves to other southern states see Schwarz, "Transportation of Slaves from Virginia," 221–23.

[67] An undated letter received December 16, 1846, box dated November–December 1846, LR, VEP; and CS, Transported, 1847; and Bonds, 1840–1857. On class conflicts in southern communities over rape trials of free blacks and slaves see Daniel J. Flanigan, "The Criminal Law of Slavery and Freedom, 1800–1868" (Ph.D. dissertation, Rice University, 1973), 68–69.

[68] This case is recounted in Wyatt-Brown, *Southern Honor*, 317–18; Johnson, *Antebellum North Carolina*, 71; John Hope Franklin, *Free Negro in North Carolina* (New York, 1943), 37 and most recently and with far greater detail and analysis by Martha Hodes in "Sex Across the Color Line," Chapter 2, "Fornication: Polly Lane and Jim," 39–83. See also Hodes, *Sex Across the Color Line: White Women and Black Men in the Nineteenth-Century American South* (New Haven, forthcoming), Chap. 3. Facts relating to this case are taken from these secondary sources as well as from the subsequently cited primary sources.

Polly accused Jim of assaulting her and implored Dick not to tell the Peppingers of the attack. She also confided to Dick that she was "big" and offered him a dollar to "get her something to destroy it." The inference to be made, of course, is that Polly and Jim had been having an affair, she became pregnant, then feigned the rape, perhaps realizing that the only way out of the embarrassing situation was to deny that consensual sexual relations had ever taken place with Jim. Several witnesses challenged her account, however, by testifying that they had seen Polly and Jim together intimately on numerous occasions.[69]

Members of the jury, which convened in October and heard testimony, believed that the evidence weighed more heavily in favor of Polly Lane; they convicted Jim and set the date for his execution later that year, on December 23, despite suspicions that Polly was pregnant at the time of the trial, which she denied.[70] As the execution date neared, Polly Lane was no longer able to conceal her pregnancy, which by this time had caused considerable excitement in the community. Had Jim, not Polly, told the truth? Had Polly been trying to conceal their relationship? Was she desperate to ward off ostracism from family and community, even at the cost of Jim's life? The white community was very divided and contentious in its response to these and other questions.

Six white male petitioners asked the governor to transport Jim out of the state or at least to grant him a reprieve until the birth of Polly Lane's child.[71] Alexander Gray, a juror who had voted for conviction,

[69] Petition dated December 8, 1825, Papers of Governor Hutchins Gordon Burton, Governors' Papers 55 (hereinafter GP 55) (North Carolina Department of Cultural Resources, Division of Archives and History).

[70] M. Henderson to Governor Burton, December 5, 1825, and Alexander Gray to Burton, December 8, 1825, and March 24, 1826, GP 55. Considerable debate and correspondence was devoted to the suspected pregnancy, which as time passed was confirmed. One issue was the date of conception. During the October trial Polly Lane denied that she was pregnant. If Jim's contention that she was one month to six weeks pregnant by the date of the alleged rape, August 16, were true, her pregnancy would have been difficult to conceal but not entirely impossible. As the advanced pregnancy made her lie untenable, Polly Lane changed her story and claimed that she had been impregnated on August 16, the date she claimed that Jim had raped her. That version of the story would have meant a delivery date around May 16, according to those Davidson County residents who were keeping track. When, in late March, the birth appeared imminent, above five weeks before an August 16 conception due date, Polly Lane again adjusted her account to say that if the child born to her were mulatto, it was conceived at the time she claimed Jim had raped her. But if the child were white, it was begotten by a Mr. Palmer, a white man. A second but related concern was whether or not a woman could conceive as the result of a rape. Conventional, as well as medical, wisdom of the time erroneously stated that arousal of the woman was necessary for fertilization. Governor Burton even solicited the opinion of a physician who concluded that "if an absolute rape were to be perpetrated it is not likely she would become pregnant." Letter of March 27, 1826, GP 55.

[71] Six petitioners to Burton, December 8, 1825, *ibid.*

defended the jury's guilty verdict in the face of weak evidence presented by the defense. While Gray acknowledged that "in that neighborhood a greater intimacy existed between the blacks and whites than is usual or considered decent," Jim's attorney failed to prove that Jim and Polly had an illicit sexual relationship. Though Gray continued to believe the correct verdict had been rendered, he nonetheless wanted to hedge his bets and requested the governor to postpone the execution. A second letter by Gray in March reveals an about-face; by that time Lane's advanced pregnancy had all but unravelled her tale, and Gray expressed outrage that she had knowingly perjured herself by denying consensual sex with Jim before the night of the alleged rape. "If this is the case and she knew it at the time [of the trial], no part of her testimony ought to be believed."[72]

As the birth of Polly Lane's child approached, fewer and fewer of her supporters, such as Gray, remained in her camp. But as late as March 24 Jim's legal counsel, James Martin, feared that "many persons in the county . . . would execute this negro."[73] Martin worried that the birth might be concealed in order to facilitate Jim's hanging. Martin's qualms appear not to have been unfounded, for when local officials attempted to serve bastardy papers on Polly Lane, she could not be located. On advice of those "anxious for the execution" of Jim she had hidden herself.[74]

Polly Lane's mixed-race baby was born on April 7, thus strengthening Jim's claim that she was already pregnant in mid-August when she claimed to have been raped. Alexander Gray concluded his thoughts on the matter by writing the governor that the birth of Polly Lane's baby proved that "she must have knowingly and willingly sworn to a falsehood in saying . . . she was not pregnant [at the time of the trial. The] presumption naturally arises that the rest of it [her testimony] ought not be entitled to credit."[75] Even in the face of strong material evidence, however, some members of the white community stubbornly refused to desert Polly Lane, choosing instead a different tack in arguing for Jim's execution. Doggedly denying that Polly Lane's baby was mulatto, John Smith denounced Jim's character as "one of the worst in my memory." Another letter writer reported that some residents of the county "are anxious for his execution not because they believe the conviction rightful but on account of general

[72] Alexander Gray to Burton, December 8, 1825, and March 24, 1826, *ibid.*
[73] James Martin of Lexington to Burton, March 24, 1826, *ibid.*
[74] A.W. Shepperd to Burton, March 24, 1826, *ibid.*
[75] Alexander Gray to Burton, May 18, 1826, *ibid.*

bad character." In other words, Jim's execution need not be sanctioned by Polly Lane's claim of sexual assault, which had been proved to be baseless. Jim was a troublemaker pure and simple, reason enough in and of itself to kill him.[76] However, the governor's sympathies clearly rested with those who argued for Jim's release. Instead of being hanged, Jim was transported out of North Carolina.[77]

Whether or not this protracted and bitter dispute among the white residents of Davidson County, North Carolina, was primarily caused by class prejudices is not certain. However, it is clear, because she was employed as a domestic servant, that Polly Lane was from a poor family. The Lane family's claim to honor is evidenced by its defiant attempt to shield Polly from probing community members bent on ascertaining the truth about very private and intimate matters. It is also conceivable that the Lanes saw themselves challenged by a propertied slaveholder, Abraham Peppinger, whose financial stake in saving Jim's life necessarily required that he challenge the integrity of their daughter and hence of the Lane family. Peppinger was wealthy enough to hire two of North Carolina's finest barristers, James Martin and John Motley Morehead, the latter of whom served two terms as governor in the 1840s.[78] These two lawyers had developed a greater stake in procuring Jim's pardon because Abraham Peppinger promised to turn Jim over to the two should their efforts prove successful.[79]

Ties of kinship and friendship, inextricably linked to class, also probably shaped the principals' sympathies and their responses to the unfolding events. John Smith, characterized by Bertram Wyatt-Brown as a "semiliterate member of the clan to which Polly Lane belonged," refused to sign a bastardy warrant against Polly Lane, yet magistrate Jesse Hargrave, himself the owner of twenty-eight slaves, did.[80] Other motives vied for attention as well: humanitarianism (Peppinger's attachment to Jim; community members unwilling to see an innocent man, black or white, go to the gallows); financial interests (Peppinger's financial loss if Jim were executed; Jim's attorneys' prospect of acquiring Jim if his life were spared); and perceptions about gender

[76] Letters from John M. Smith to Burton, March 23, 1826, and May 6, 1826 (quotation from Smith) and letter from A.W. Sheppherd, March 24, 1826, *ibid.*

[77] Wyatt-Brown, *Southern Honor*, 318; and Hodes, "Sex Across the Color Line," 59.

[78] Hodes, "Sex Across the Color Line," 49*n*29. It is worth noting that Morehead's political career was not tarnished by his defense of a slave rapist.

[79] John M. Smith to Burton, March 23, 1826, and J. M. Morehead to Burton, May 20, 1826, GP 55.

[80] Wyatt-Brown, *Southern Honor*, 317; and James Martin to Governor Burton, March 24, 1826, and Jesse Hargrave to Burton, March 24, 1826, GP 55.

VIRGINIA SLAVES CONVICTED OF RAPE OR ATTEMPTED RAPE, 1800–1865, AND VERIFIABLE OUTCOMES

	Transported	*Executed*	*Unknown outcome*	*Total known outcome*
1800–1809	7 (39%)	10 (56%)	0	18[1]
1810–1819	0 (0%)	9 (82%)	0	11[1,2]
1820–1829	10 (37%)	17 (63%)	2	27
1830–1839	8 (42%)	11[3] (58%)	0	19[3]
1840–1849	14 (54%)	12 (46%)	0	26
1850–1859	16 (55%)	13 (45%)	0	29
1860–1865	7 (70%)	3 (30%)	4[4]	10

SOURCES: Data gathered from an array of sources at the Library of Virginia, including Letters Received in the Virginia Executive Papers, Pardon Papers, Transportation and Execution records from the Auditor of Public Accounts as well as bond documents, county court order and minute books; Philip J. Schwarz, *Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705–1865* ([Baton Rouge], 1988); and James Hugo Johnston, *Race Relations in Virginia and Miscegenation in the South, 1776–1860* (Amherst, Mass., 1970). Percentages are based on the total of known and verifiable outcomes.

[1] Includes one sentence of castration.
[2] Includes one slave who escaped from jail.
[3] Includes one case of rape/murder.
[4] No records of financial compensation can be located among funds dispersed by the Virginia treasury, indicating a strong probability these four were pardoned by the executive.

and sexuality (proof of Polly Lane's compliance negated her claims of sexual assault).

As sectional tensions worsened and the political debate over slavery heated up in the years preceding the outbreak of war, one might expect to find a concomitant increase in anxiety about black sexual assault, especially since abolitionists had brought the issue of sexual assault of slave women to the forefront, making it a highly charged subject.[81] By looking at the trends in transportation of convicted slaves out of the state during this time, one can indirectly gauge the pulse of the white community for any fears of black rapists. Governors were in no position to antagonize large pools of voters by pardoning or commuting sentences of convicted African American rapists if concerns over the "black-beast-rapist" were rampant.

In fact, transportation patterns by Virginia executives reveal that, as the Civil War approached, a convicted black sex offender was far more likely to be transported than hanged (see table). Execution was the punishment of choice for slaves convicted of rape or attempted

[81] Ronald G. Walters, "The Erotic South: Civilization and Sexuality in American Abolitionism," *American Quarterly,* XXV (May 1973), 177–201.

rape in the early part of the century. But as the Civil War approached and tensions heightened, state officials spared the lives of convicted slave rapists in a majority of cases.

The pattern, at least for antebellum Virginia, then, is one of greater leniency as the nineteenth century progressed.[82] The irony here is that although the statutes for rape by black men of white women became harsher, implementation of the harsher penalties did not automatically follow.[83] One can only speculate about the reasons. Perhaps as state executives became more concerned with fiscal savings, they increasingly utilized transportation of slave criminals, an option that allowed them to recover at least some of the compensation costs paid to the slaves' owners. The defensive posture struck by southerners in response to abolitionism may offer another explanation for the tendency to spare the lives of convicted black rapists. By showcasing their humanitarianism, elected officials may have hoped to demonstrate the benevolence and justice of slavery.

Whatever the motivation, the trend documented here appears to have been part of a larger tendency among authorities in Virginia to administer slave justice, even in these most serious cases, without resorting to capital punishment. Philip Schwarz's comprehensive account of slave crime in Virginia reflects similar patterns from the eighteenth century to the mid-nineteenth century. For example, the statistics he marshals on slaves executed or transported for murder from 1785 through 1829 also show a greater utilization of transportation as the decades wore on. Of the twenty-three Virginia slaves who were convicted of murder from 1785 through 1794, all twenty-three were executed. But from 1820 through 1829, a period in which eighty-three slaves were condemned to die for murder, sixty-one (73 percent) were actually hanged while twenty-two (27 percent) were transported out of Virginia. Similarly, Schwarz documents less reliance on execution of slaves convicted of conspiracy and insurrection. Of eleven slaves convicted for this crime from 1790 through 1799, one received corporal

[82] This trend is corroborated by Schwarz's study of Virginia slave crime, *Twice Condemned,* 292. He writes that "the number of slaves sentenced to death for rape of white women declined steadily while the percentage of slaves transported rather than executed rose steadily."

[83] On the passing of rape laws that mandated harsher punishment for African American males see Higginbotham and Kopytoff, "Racial Purity and Interracial Sex in the Law of Colonial and Antebellum Virginia," 2017. For information on the more general trend of stricter slave regulation see Fogel and Engerman, *Time on the Cross*, 37. And on harsher slave laws offset by more lenient treatment of slaves see Julius Yanuck, "Thomas Ruffin and the North Carolina Slave Law," *Journal of Southern History*, XXI (November 1955), 473.

punishment and ten were executed. However, during the period 1830 through 1834, a time when the Nat Turner revolt had deeply aroused the Virginia countryside, eighty-nine slaves were tried for insurrection, of whom only forty-five were convicted. Of these, one was pardoned, twenty-one transported, and twenty-three, or just about half, were executed.[84] The trend toward saving convicted slave rapists from the gallows, then, appears to have been part of a larger tendency toward sparing the lives of all convicted slave criminals. Furthermore, there does not seem to have been any special onus attached to slave rapists that mandated special, harsher punishment.

If one accepts for the moment that the financial self-interest of the state, as well as that of the individual slaveholders, was the chief motive in sparing these slaves' lives, what then could have been the motivation for some whites in siding with free African American men accused of raping white women or girls? Official records yield two cases of attempted rape of young white girls by free black men in Virginia in 1833, only two years after the Nat Turner rebellion. Caleb Watts, a free black, met eleven-year-old Jane Barber one summer day at the local mill, and Watts offered to carry the girl's ground corn at least as far toward her home as he was going. At the place where the two were to part, according to Barber, the assault took place. By his own admission, Watts demanded some sort of compensation for his good deed. Barber replied that she was but a poor girl who had nothing to give but herself. "Give me yourself, then," Watts was said to have demanded. Barber cried out and apparently Watts choked the girl and wielded a knife in order to quiet her during the assault. Watts was indicted and tried for assault upon Jane Barber, and the jury found him guilty.[85] Defense counsel then appealed the conviction on the inventive grounds that the victim was, at the time of the assault, under the age of twelve and thus had not yet attained puberty; therefore, Jane Barber was not a woman under the strict statutory definition of a woman. How then could Watts be guilty of raping a woman, reasoned his appeal. The Virginia high court found no merit in this argument and ordered that the death sentence be passed upon the prisoner.[86]

As a last resort, Watts's attorney Edward Wood launched a feverish correspondence with the governor of Virginia. Wood wrote two letters

[84] Schwarz, *Twice Condemned*, 236 and 248.

[85] July 1834 folder, box 267 (April–October 1834), LR, VEP; and Westmoreland County Superior Court Order Book, October 16, 1833, pp. 163–65, and April 23, 1834, p. 183 (Library of Virginia) (microfilm reel no. 77).

[86] *Commonwealth of Virginia* v.*Watts*, 4 Leigh 672 (1833).

himself and penned a preachy but emotional petition ostensibly signed by "almost every man of respectability" including one jury member. Although the sexual morality of the girl was never challenged directly, Wood did claim that she and her mother were of the "lowest order in society" and questioned the credibility of "a girl who has been raised with an aunt who has given birth to several bastard children."[87]

The attorney for the Commonwealth, W. Thurman, who prosecuted the case in county court, also wrote to the governor claiming that he himself harbored doubts about the alleged victim and cited discrepancies in the testimony of some witnesses whom Thurman claimed possessed "prejudice against the defendant, and eagerness for his condemnation." He questioned the ability of the jury to have arrived at a fair and impartial decision given the "strong popular prejudice and excitement against the prisoner" that prevailed in the community.[88] Although the light-skinned Caleb Watts did not have the unanimous support of the white community, he did seem to have the sympathy of several members of the local elite. Whether or not their patronage was sufficient to win a reprieve for Watts is not known, as no documentation of his ultimate fate has been found.[89] Nonetheless, the case demonstrates that the white community was far from unified. Clearly, the alleged crime excited the community, and some citizens no doubt wished to see Watts hang. Still others, apparently not motivated by economic self-interest as a slaveholder might be, displayed great empathy for the free black man and his predicament, a man who "had borne a character of singular respectability for one of his own caste."[90]

[87] Undated petition and letters by Ed. Wood, June 26, 1834 (second quotation) and July 9, 1834 (first and third quotations), July 1834 folder, box 267, LR, VEP.

[88] Thurman to the governor, June 11, 1834, *ibid.*

[89] Watts's name does not appear on transportation or execution records, indicating that he may very well have been pardoned.

[90] Thurman to the governor, June 11, 1834, July 1834 folder, box 267, LR, VEP. Such support for free blacks in southern communities was not as rare as we might first suspect. Perhaps we should re-examine U. B. Phillips's claim that southern whites in some localities embraced and respected industrious and productive free African Americans. Phillips, *American Negro Slavery*, 430–37. See also Crow, *Black Experience in Revolutionary North Carolina*, 32; Franklin, *Free Negro in North Carolina*, 45–46; Gary B. Mills, "Miscegenation and the Free Negro in Antebellum 'Anglo' Alabama: A Reexamination of Southern Race Relations," *Journal of American History*, LXVIII (June 1981), 16–17, 27, and 31–32; Alexander, *Ambiguous Lives*, 120; John E. Fisher, "The Legal Status of Free Blacks in Texas, 1836–1861," *Texas Southern University Law Review*, [IV] (Summer 1977), 342–62; Thomas E. Buckley, S.J., "Unfixing Race: Class, Power, and Identity in an Interracial Family," *Virginia Magazine of History and Biography*, CII (July 1994), 349–80. For a contrasting view see Michael Hindus, "Black Justice Under White Law," 584. His study of two South Carolina counties documents free blacks prosecuted at a rate six times that of slaves.

Presumably his boosters were quite willing to sacrifice the reputation of an eleven-year-old white girl to save Caleb Watts's life.

Free black Tasco Thompson, a blacksmith from Frederick County, Virginia, was also found guilty in 1833 of the attempted rape of an eleven-year-old white girl, Mary Jane Stevens. However, the defense had presented mitigating circumstances that persuaded the jury foreman to recommend leniency. He cited

> the exceedingly disreputable character of the family of the said Stevens. . . . It was notorious that the mother had long entertained negroes, and that all her associations, with one or two exceptions were with blacks. . . . In a word she was below the level of the ordinary grade of free negroes. . . . There is no doubt that he [Thompson] repaired to the house of Mrs. Stevens in the belief that she would cheerfully submit to his embraces, as she doubtless had often done before, but finding her absent he probably supposed his embraces would be equally agreeable to her daughter . . . .[91]

The sins of the mother are the sins of the daughter. Furthermore, the foreman argued, had Mrs. Stevens been colored there would have been no case. The Stevenses "yielded their claims to the protection of the law by their voluntary associations with those whom the law distinguishes as their inferiors." In short, Mrs. Stevens acted "colored" and therefore should be treated as "colored."[92] In the eyes of the foreman of the jury, because of her liaisons with black men, Mrs. Stevens had forfeited the privilege that her white skin might have accorded her, not only for herself but also for her daughter.

As these and numerous other cases demonstrate, judicial vindication for white females who claimed to be victims of sexual assault at the hands of black men in the Old South was neither axiomatic nor unconditional. White women who claimed to have been sexually violated by African American men sometimes actively sought redress from the courts. They may or may not have received it. A court or community's decision to extend support hinged on any number of factors, not the least of which was a white woman's compliance with socially ac-

[91] October 18, 1833, LR, VEP, as quoted in Johnston, *Race Relations in Virginia*, 263. This document could not be located at the Library of Virginia as cited by Johnston. Also, see *Thompson* v. *Commonwealth of Virginia*, 4 Leigh 652 (1833); and Frederick County Superior Court Order Book, 1831–1835, entries for May 22, 23, June 10, 1833, pp. 208, 210, and 224 (Library of Virginia) (microfilm reel no. 100). On Thompson's occupation refer to Rebecca A. Ebert, "A Window on the Valley: A Study of the Free Black Community of Winchester and Frederick County, Virginia, 1785–1860" (M.A. thesis, University of Maryland, 1986), 48.

[92] October 18, 1833, LR, VEP. No documentation that verifies the outcome of Thompson's appeal has been found. However, his name does not appear on lists of blacks executed or transported in the early 1830s.

ceptable behavior. Deviant conduct severely undercut a white woman's demand for protection in the Old South. Those white females, or their network of female kin, who failed to obey the established code of race and gender conventions may have found their road to protection strewn with obstacles. Race, then, was far from being the sole determining factor in the outcome of these cases.

As far as can be determined, most of the females claiming to have been sexually assaulted by African American males were not members of the planter class. The records reveal very few instances in which elite women and girls charged rape by a slave or free black man.[93] If female members of the slaveholding class did levy accusations of rape or attempted rape against black men, mob action or plantation justice may have supplanted official authority in an endeavor to spare the women or girls the notoriety of a public trial. Such action, however, would run counter to slave owners' financial interest since masters did not receive compensation for the loss of slaves at the hands of de facto plantation executioners or lynching parties.[94] In cases involving female family members, however, revenge and pride could well have overridden the concern for financial compensation.

Most complainants were poor white women or girls. They fre-

[93] I have found only eleven cases, eight in the nineteenth century before the Civil War, in which it appears that the complainant was a member of the slaveholding class. In most of these cases the victim was a member of the master's family. An Alabama newspaper reported in 1855 that a slave had ravished and murdered his master's fourteen-year-old daughter. See Huntsville *Democrat*, May 24, 1855, as reported in James B. Sellers, *Slavery in Alabama* (University, Ala., 1959, 1964 ed.), 253; and Phillips, *American Negro Slavery*, 462. Phillips reported that the slave was burned alive. In 1844 a Tennessee slave attempted an assault on a pregnant woman who was en route to visit her mother, a slaveowner. *Bill, a Slave* v. *State of Tennessee*, 5 Humphreys 155 (1844). See also Trial of Tom, September 14, 1775, and Trial of Nat, September 6, 1775, Lancaster County Court Order Book (1778–1783), pp. 8 and 7 (Library of Virginia) (microfilm reel no. 30); Trial of Bob, June 13, 1783, Southampton County Court Order Book (1778–1784), p. 336 (Library of Virginia) (microfilm reel no. 27). Also consult the cases of Dick, who was convicted of raping the four-year-old daughter of his master, Charles Briggs of Southampton County. Box 157, LR, VEP, and CS, Executed, 1808; Arche, of Botetourt County, who was found guilty of raping Rosanna Switzer, the wife of his master. CS, Executed, 1805; Beverly, of Halifax County, condemned for raping his owner's wife. CS, Executed, 1843, and, April 15, 1843, Halifax County Court Order Book (1838–1845), pp. 141–44 (Library of Virginia) (microfilm reel no. 71); Stephen, of Fauquier County, who was convicted of raping Lucinda Jeffries (her relationship to owner, Enoch Jeffries, is unknown but most likely a female relative). CS, Executed, 1811; Joshua, of Monongalia County, for raping the daughter-in-law of his owner James Collins. July 1–10, 1827 folder, box 299, LR, VEP; and John, of Rockingham County, convicted for the attempted rape of Mary Sipe, an unmarried female over the age of 16 who lived in the home of John's owner, Jacob Sipe. CS, Transported, 1841. Of these latter six, only John's life was spared.

[94] In some southern states, for example South Carolina, slave owners were required by law to present for trial any slave accused of a capital crime. Hindus, "Black Justice," 582. There is no adequate measure of the frequency of slave owners' compliance with this law.

quently lacked a male protector, either father or husband. Some were described by the courts as "weak-minded" or "idiots."[95] Free black men and slaves seem to have assaulted poor white women and sometimes even to have gotten away with it, which indicates how marginal these women were to antebellum southern society.[96] As Victoria Bynum has observed, poverty defeminized and thus further marginalized white women in the Old South.[97] In strictly economic terms, poor white women in southern slave society were less valuable to elites than slaves were. And since slavery defined the status of most southern blacks, white racial solidarity across class lines was not necessary in the antebellum period; it became critical after emancipation, when African Americans, whose place in society was in constant flux, assumed unprecedented political positions and posed a threat to white elites.[98]

Whites in the Old South appear not to have been so blinded by fear and anxiety of black male sexual assault as to deny the accused procedural rights. In confrontations between two marginalized groups in the South, poor white females and African American males, race proved not to be the sole factor shaping the outcome or the responses of white observers. Instead, any of a myriad of motives could have prevailed in the development and denouements of these violent sexual dramas. Masters motivated by economic self-interest repeatedly utilized the judicial system in last-ditch efforts to keep their valuable

[95] *Stephen* v. *State,* 11 Ga. 225 (1852). Also, see the South Carolina cases, *State* v. *Harry*, November 5, 1851, and *State* v. *Daniel*, January 15, 1859, both cited in Hindus, "Black Justice Under White Law," 592. In all three cases the slave defendants were convicted. In 1819 a Cumberland County, Virginia slave, Dennis, was sentenced to hang for the rape of Elizabeth Smith, described in court records as "a very simple weak woman." Dennis broke jail before his scheduled execution. June 24–30, 1819 folder, box 254 (June 1819), LR, VEP; and Virginia, *Acts* (1819), ch. 143, pp. 103–4. A white teenaged girl who could not speak and was regarded by many in the neighborhood as "an idiot" was allegedly raped by a slave who was sentenced to transportation by the jury. January–June 1862, Pardon Papers, VEP; and CS, Transported, 1862.

[96] The issue of presumed guilt in this essay is indeed tricky for the historian, especially in light of the many trumped-up charges in the latter part of the nineteenth century. To assume that all these defendants were guilty seems just as unwarranted as assuming that none of them were guilty. In some cases the evidence is more forthcoming, allowing the researcher to venture an educated guess. Other times, the evidence is stingy, yielding little. And never are we privy to the actual voice of the black accused. Nevertheless, it seems reasonable to concede that sexual assault takes place in all cultural universes. So, too, we must assume that some of these cases did in fact represent unwanted sexual violence against white women and girls. That stated, the use of discretion and caution in assessing culpability is essential in these cases.

[97] Bynum, *Unruly Women*, 57.

[98] The work of Laura Edwards confirms that, at least for Granville County, North Carolina, in the two decades following the Civil War, sexual violence in all but a few cases was committed against poor white and African American women. "Sexual Violence, Gender, and Reconstruction in Granville County," 237–60.

property from the gallows.[99] In cases such as these, the slave's status as chattel worked effectively to save his life. By protecting their property, however, slaveholders turned their backs on women who shared their race but not their class.

More perplexing, perhaps, are the circumstances of free blacks who represented no such financial interest. Even so, community members, courts, and elected officials at times intervened to save the life of a convicted free black rapist.[100] Motives here are less apparent but could include any combination of humanitarianism, personalism, misogyny, class prejudice, personal grievance, and fear of job competition.[101]

The common denominator in sexual assault cases of both slave and free defendants, however, seems to be that white elites were animated by notions of class and gender that permitted them to hold poor white women and girls in such low regard that they would ally with African American men against the white female accusers.[102] This does not mean that every black man charged with raping a white female could with certainty expect reprieve or pardon. In this context, it is instructive to answer the question, Under what circumstances would whites ever ally with an accused black rapist? And more important, What do such cases reveal about the nature of race and class relations in the Old South? Recently, Nell Irvin Painter issued a challenge to histori-

[99] As Kenneth Stampp has asserted, "The slave as property clearly had priority over the slave as a person." *Peculiar Institution*, 204 (quotation) and 227–28. See also Hodes, "Sex Across the Color Line," 77.

[100] Other sexual assault cases involving free men of color as defendants include *Thurman* v. *State*, 18 Ala. 276 (1850); *Commonwealth* v. *Jerry Mann*, 2 Va. Cas. 210 (1820); *Commonwealth* v. *Tyree*, 2 Va. Cas., 262 (1821); *Commonwealth of Virginia* v. *Fields*, 4 Leigh 648 (1832); *Day* v. *Commonwealth of Virginia,* 2 Grattan 562 (1845) and 3 Grattan 629 (1846); *Smith* v. *Commonwealth of Virginia*, 10 Grattan 734 (1853). The Richmond *Daily Dispatch* of April 27, 1854, reported that a free black man stood accused of attempting to rape a white woman whose credibility the paper seemed to doubt because of her associations with the "lowest and most debased free negroes in the valley . . . ." Quoted in Hodes, "Sex Across the Color Line," 79. The Raleigh *Register* reported the case of Henry Carroll, a free African American convicted of raping a white woman. His death sentence was stayed, at least for a time, by the governor in response to a petition signed by "respectable portions of our citizens . . . ." Raleigh *Register and North Carolina Gazette*, April 14, 1831, p. 3 and May 12, 1831, p. 3 (quotation); and Governor Montfort Stokes, Letterbook No. 29, May 5, 1831, pp. 22 and 45 (North Carolina Department of Cultural Resources, Division of Archives and History).

[101] This last motive explains fissures along class lines in the white community. Working-class and middling whites may have worried about free black men selling their skills and wares cheaply, a factor that would also account for elite patronage of free blacks. Phillips, *American Negro Slavery*, 453.

[102] This observation is consistent with Joel Williamson's overarching characterization of southern race relations from 1850 to 1915. In 1850, Williamson writes, the white elite allied with the "black mass," enabling the elite to maintain control over society. But by 1915 the white elite had virtually abandoned their connection with blacks and bonded instead with the "white mass." Williamson, *Crucible of Race*, 512 and 519.

ans of the South to go "beyond lazy characterizations in the singular" and to recognize "the complex and contradictory nature of southern society." "Though southern history must take race very seriously," Painter continued, "southern history must not stop with race."[103] If Professor Painter will permit the addendum, nor must southern historians use race as their starting point, a long-standing practice that has tended to mute the inherent contradictions of antebellum southern society. Was there far greater fluidity in race relations—and less in class relations—than historians heretofore have been willing to recognize?[104] The recent scholarship of Martha Hodes and Victoria Bynum suggests as much. Peculiar cross-racial alliances such as the ones played out in these rape cases underscore the complex web of contested loyalties confronting antebellum southerners. Appreciation of fissures in the mind of white southerners along the fault lines of gender, race, and class may lead to a more complete understanding of how various groups within southern society configured in relation to each other. Simply stated, race represented only one of a number of competing interests and frequently gave way to those other interests, often at the expense of racial allegiances.

In the slave South, then, protection was not bestowed unconditionally upon white women simply because of their race. Evidence suggests that poor white females, especially those who flouted sexual and racial mores, may have been stripped of protection when they claimed to have been sexually violated by a black man—if in fact protection had ever been accorded to them. Sometime after emancipation, however, poor white women began to receive some of the privileges and honor previously the sole domain of their wealthier, well-behaved cousins. As Jacquelyn Dowd Hall has noted, "the connotations of wealth and family background attached to the position of the lady in the antebellum South faded in the twentieth century, but the power of 'ladyhood' as a value construct remained."[105]

At the third trial of the Scottsboro Boys in 1933 the defense attorney attempted to discredit the testimony as well as the credibility of one of the accusers, whom he described as "a 'lewd woman'" and "a

[103] Nell Irvin Painter, "Of *Lily*, Linda Brent, and Freud: A Non-Exceptionalist Approach to Race, Class, and Gender in the Slave South," *Georgia Historical Quarterly*, LXXVI (Summer 1992), 259.

[104] See, for example, Buckley, "Unfixing Race," 349–80.

[105] Jacquelyn Dowd Hall, "'The Mind That Burns in Each Body': Women, Rape, and Racial Violence," in Ann Snitow, Christine Stansell, and Sharon Thompson, eds., *Powers of Desire: The Politics of Sexuality* (New York, 1983), 335–36.

'girl tramp'" "with the vicious quick wit of a wanton."[106] This strategy, which had been successfully used to defend black rapists in the first half of the nineteenth century, severely backfired in 1933. Underscoring how critical race had become in black-on-white rape cases, an outraged courtroom spectator later rebutted that the alleged victim "might be a fallen woman, but by God she is a white woman."[107] The defense attack elicited a more damaging response from the presiding judge, who in his charge to the jury reasoned that: "Where the woman charged to have been raped, as in this case is a white woman there is a very strong presumption under the law that she would not and did not yield voluntarily to intercourse with the defendant, a Negro; and this is true, whatever the station in life the prosecutrix may occupy, whether she be the most despised, ignorant and abandoned woman of the community, or the spotless virgin and daughter of a prominent home of luxury and learning."[108]

By the 1930s the definition of interracial rape had evolved substantially from that of the antebellum period. No longer was a white woman's character considered a mitigating factor in the defense of a southern black man on trial for rape or attempted rape. "Interracial rape was not simply the assault on a white woman by a black man; it was sex between a black man and a white woman because most Southerners assumed that a white woman would never yield voluntarily to a black man . . . ."[109] The confluence of race and class relations, which in the Old South had been fluid and malleable, later became rigid and intractable as whites confronted the reconfigured economic, political, and social conditions of the postbellum South and recognized that African Americans were no longer completely under their control. In the process, poor white women, previously marginalized and disparaged by Old South elites, found themselves suddenly hoisted tenuously and precariously onto the pedestal of ladyhood and catapulted to their place in the twentieth-century white supremacist South.

[106] Carter, *Scottsboro*, 295.
[107] *Ibid.*
[108] *Ibid.*, 297; and Goodman, *Stories of Scottsboro*, 227.
[109] Goodman, "Stories of Scottsboro," 403.